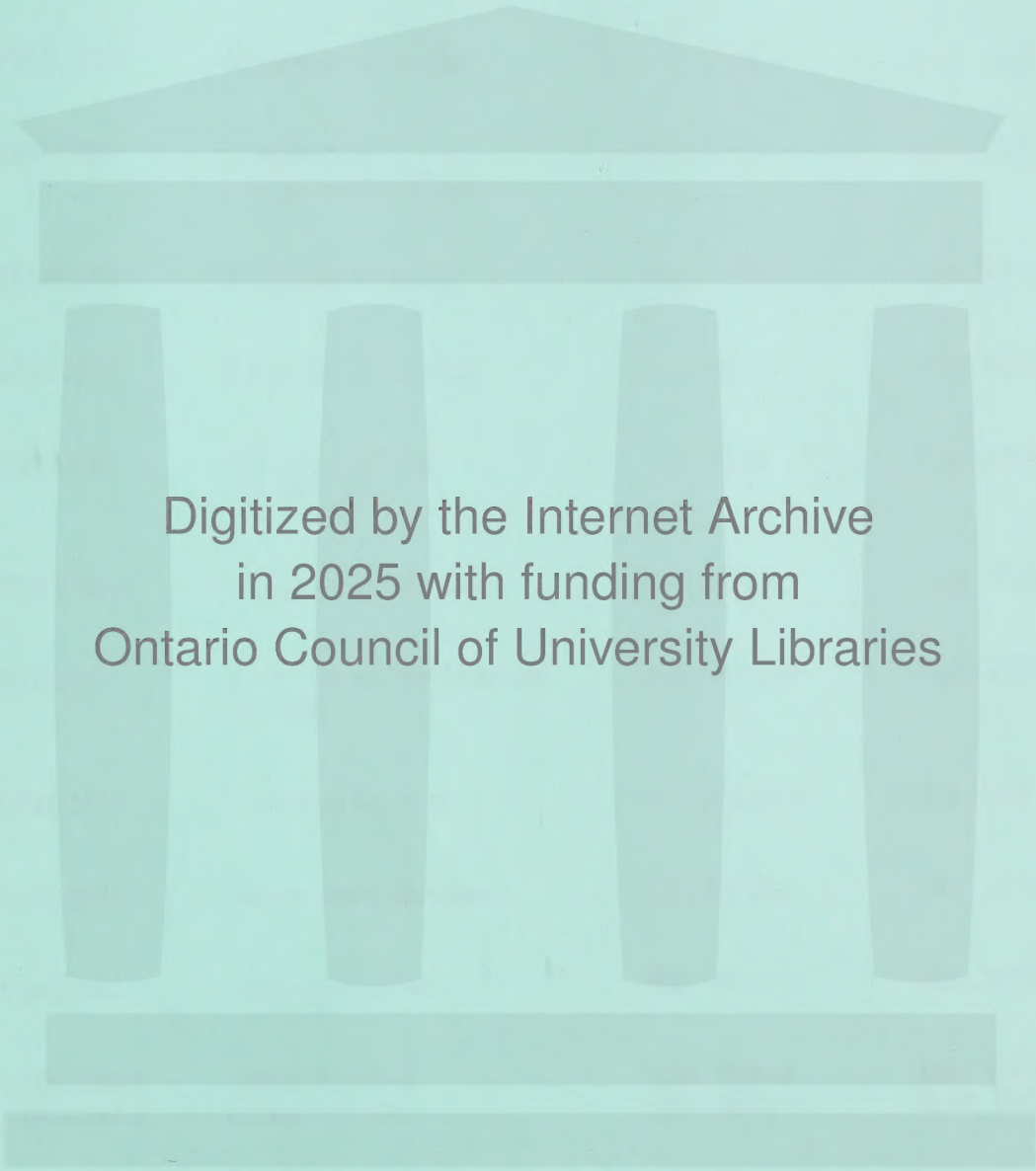
ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL DECISIONS



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ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL

INTEREST ARBITRATION DECISIONS VOLUME 1

1980 - T/0040/84

File No.	Re:	Chairman	Date
T/0014/80	Maintenance Services	G.J. Brandt	Sept. 16/80
T/0013/81	Workmen's Compensation Board	K.P. Swan	Apr. 12/82
T/0005/82	Technical Services	K.P. Swan	June 28/82
T/0015/82	Correctional Services	A. Kruger	July 20/82
T/0016/83	Education Officer Classification	V.E. Scott	Feb. 28/86
T/0017/84	Correctional Services	D.H. Kates	Aug. 31/84
T/0020/84	Scientific and Professional Services	A.M. Kruger	Sept. 27/84
T/0021/84	Technical Services	T.G. Bastedo	Jan. 7/85
T/0022/84	Maintenance Services	E.E. Palmer	Dec. 25/84
T/0023/84	Institutional Care	H.D. Brown	Oct. 24/84
T/0024/84-1	Office Services	H.D. Brown	Dec. 19/84
T/0024/84-2	Office Services	H.D. Brown	Sept. 16/85
T/0026/84	Clerical Services	E.E. Palmer	Dec. 13/84
T/0027/84-1	General Operations	L.-R. Betcherman	Dec. 11/84
T/0027/84-2	General Operations	L.-R. Betcherman	Nov. 6/85

File No.	Re:	Chairman	Date
T/0029/84	Administrative Services	E.E. Palmer	Dec./84
T/0040/84	Workers' Compensation Board	H.D. Brown	Jul. 15/85

T/14/80

IN THE MATTER OF AN ARBITRATION UNDER THE PROVISIONS OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT, R.S.O. 1972, CHAPTER 67 AS AMENDED

Interest Arbitration

BETWEEN:

THE CROWN IN THE RIGHT OF ONTARIO AS REPRESENTED BY THE MANAGEMENT BOARD OF CABINET

(The Employer)

AND

THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION

(The Union)

AND IN THE MATTER OF A DISPUTE RELATING TO THE MAINTENANCE SERVICES CATEGORY

BOARD OF ARBITRATION: G.J. Brandt, Chairman
K.W. Preston, Employer Nominee
R. Cochrane, Union Nominee

APPEARANCES:

For the Employer: R.B. Itenson
W.S. Gorchinsky

For the Union: Grant Bruce

A hearing in this matter was held in Toronto on July 28, 1980.

This Board is constituted under the provisions of the Crown Employees Collective Bargaining Act to determine a dispute between the parties relating to the wages to be paid to employees in the Maintenance Services Category of the bargaining unit.

The Parties and Their Positions

The history of bargaining of this dispute is as follows: the Union served notice to bargain on October 3, 1979 and the parties met in direct negotiation on November 19, 1979. The collective agreement then in force expired on December 31, 1979. Failing a resolution of the dispute the parties met with a mediator on February 4, 1980. The negotiating committees of the parties arrived at a tentative settlement on February 5, 1980 and a memorandum of settlement incorporating the terms thereof was duly executed on that date.

The memorandum of settlement provided for, inter alia, an agreement to cover a term of one year to run from January 1, 1980 to December 31, 1980. It further provided for a general wage increase, effective January 1, 1980, of 7% to all classifications based on the rates in effect on December 31, 1979 and a further increase, effective July 1, 1980, of $5.60 per week to all classifications in this category. In addition, a further increase of 2%, effective July 1, 1980, was agreed upon for Pilots, Senior Air Engineers, Air Engineers and Airframe Finishers. All salary increases were to be retroactive and payable from January 1, 1980 on a full or pro rata basis. Finally provision

was made for a tool allowance of $30.00 per year to be paid to employees in the Mechanic 1 and 2, Mechanic Foreman, Air Engineer and Service Air Engineer classifications.

The membership of the Union rejected the tentative settlement contained in the memorandum of settlement and the dispute was ultimately referred to arbitration under the provision of the Act. On June 12, 1980 the Public Services Labour Relations Tribunal appointed the Chairman of the Board of Arbitration and a hearing was convened on July 28. At the hearing the parties were given full opportunity to present evidence and submissions to the Board with regard to the issues in dispute between them following which the Board met in Executive Session to consider the matter.

It is the Employer's position that the terms set out in the memorandum of settlement should become the award of the Board. The position of the Union on the general wage increase is that there should be an increase, effective January 1, 1980, of $23.50/wk plus a further 7% to all rates. This would amount to an increase of 24.5% at the bottom end of the scale, 9.43% at the top of the scale and approximately 15.0% on average. The percentage increases contained in the memorandum of settlement would provide for a corresponding increase of 9.8% at the bottom, 8.3% at the top and an average rage increase of 8.9%.

The Union also seeks special rate increase for a number of classifications. These are: Air Engineers;

Bailer Inspectors: Highway General Foreman I; Maintenance Mechanics; Maintenance Painters and Decorators; Pilots; Radio Operators; Sign Painter Helpers; Improvers; and Journeyman and Foremen; Waste and Water Project Operators and Trainees. The Union also seeks a Tool Allowance of $100/yr. for all employees who are required to supply tools on the job.

As far as the term of the agreement is concerned the Union seeks, alternatively, a 2 year agreement with a COLA clause or a one year agreement without COLA.

General Principles

i) The Memorandum of Settlement

It is necessary at the outset to resolve an important matter of principle, a matter on which the parties are clearly divided. That concerns the effect that should be given by this Board to the memorandum of settlement. As indicated above the Employer takes the position that the Board should not award more than that which the parties themselves, through their respective negotiating committees, determined to be a satisfactory resolution of the dispute. Concern was expressed that, were it otherwise, and were the Board to award more than that tentatively agreed upon, the process of future negotiations could be fundamentally affected. To quote from the Employer's brief:

> "Were the Board to make an award greater than that agreed to in negotiations, a perception would be created that arbitration may be used for improving negotiated settlements. This would only serve to inhibit free collective bargaining between the parties in the future."

The matter has been recently dealt with in a number of interest arbitration awards. Unfortunately the results are inconclusive. The award which is perhaps of

greatest significance and relevance to these proceedings is that of the Board Chaired by Howard Brown in a dispute between these parties involving the newly created Institutional Care Category. There the history of negotiations was identical with that in this case insofar as a negotiated memorandum of settlement was reached but rejected by the Union membership. That Board had the following to say about the memorandum of settlement.

> "The Board has given consideration to the memorandum of settlement reached by the parties, both of which were represented by able and experienced negotiators, who objectively bargained and reached a settlement between them. It must be noted that this is the first set of negotiations for the employees in this category as a separate category from the correctional care employees. The parties should also be cognisant that a Board of Arbitration must consider the criteria applicable under the Act in determining the award. In considering that criteria, however, we are of the opinion that it is relevant and material for the Board to consider a freely negotiated settlement reached by the negotiators for the parties during joint bargaining. Nonetheless, the Board must take into account all of the submissions in order to obtain a fair and reasonable resolution of the matters remaining in dispute."

This issue has also arisen in four other cases in the context of a question as to whether or not evidence of a negotiated settlement is properly admissable before an arbitration Board hearing an interest dispute. That is not an issue here since no objection was taken as to the admissibility of the evidence concerning the settlement. However, the views expressed in those cases are helpful in settling out the competing interests. In Re: Ottawa Board

of Education and O.S.S.T.F. District 26 (Teplitsky) the chairman treated a tentative agreement as "without prejudice" and refused to take it into account.

> "There is, however, one matter that arose in the briefs which requires comment. The briefs disclosed that a tentative agreement had been reached between the negotiating committees for the teachers and the Board, the terms of this tentative agreement and the fact that one party failed to ratify. It was then urged in a critical vein that a party was 'negotiating down' when it failed to agree to a position previously offered but not accepted at first. It must always be remembered that offers of settlement are 'without prejudice' until actual agreement is reached. An arbitrator has no interest in such offers. They should not be disclosed to him and any attempt to prejudice a party by referring to such an offer of settlement is improper. Until the parties ratify the tentative agreement, there is no agreement. If ratification does not occur then the parties are free to adopt any negotiating posture they choose.
>
> It is, of course, very unfortunate when tentative agreements are not ratified but the failure to ratify when the negotiating committee has in good faith recommended the settlement, is not barganing in bad faith nor should it be cause for exacerbating tensions between the parties. It must be understood that there is always a chance that ratification may not take place. Parties who have offered to settle are protected by law in the event ratification does not occur because the offer they have made may not subsequently be used against them. They are neither legally nor morally bound to renew the offer. The party who declines to ratify must not and cannot expect that the offer once refused remains open as a minimum base from which he may negotiate upwards. We are satisfied that the disclosure was made inadvertently and without appreciation of the protection the law affords 'offers of settlement' which protection is necessary to promote free exchange of settlement discussions."

A diffierent view was taken by Arbitrator Burkett in Re CUPE and 57 Participating Hospitals. In that case the arbitrator considered a memorandum of settle as evidence of a realistic basis of settlement.

> "The collective deicison of the union membership to reject the memorandum does not cause the Board to disregard it. Nothwithstanding the right of the trade union membership to reject the settlement recommended by its bargaining committee, the terms of the memorandum stand as evidence of a package which was seen by the negotiating committee representing both parties as a realistic basis of settlement in the circumstances of this case. Just as a union membership which rejects the commendattion of its negotiating committee in the private sector does so in the knowledge that it may be required to engage in a economic confrontation, which may or may not result in an improved package, so also a membership which rejcts the recommendation of its negotiating committee where compulsory arbitration is the final dispute settlement mechanism does so in the knowledge that an Arbitration Board will consider the memorandum as evidence of that which was seen by the negotiating committees as a realistic basis of settlement and may find that the signed memorandum consitutes an equitable basis upon which to make an award."

More recenlty there have been two contrasting views expressed. In Re City of St. Catherines and St. Catherines Professional Firefighters Association, Howard Brown admitted into evidence a pre-arbitration settlement:

> "In our opinion, we find that the memorandum of agreement entered into by the negotiating committees of the parties is an admissible document before this Board, and is relevant in the determination of the issues in a like manner of reference for instance, to other arbitration awards dealing with police and firefighters throughout the Province. We are not dealing with the parties' proposals during their negotiations, nor should a Board of Arbitration inquire or be interested in the parties' positions

and representations during negotiations. Those matters of negotiations are between the parties which must have full freedom in their attempts to conclude a collective agreement without the spectre of a third party looking in on the negotiations some time in the future.

Nonetheless, after the parties have concluded their negotiations and have come to a written agreement which is not expressed on its face to be without prejudice to either party's future position, but is a final and signed memorandum of settlement which was negotiated by those given the responsibility by the parties, and which will, subject to the approval of the principals, form the collective agreement, it is a piece of objective evidence which the Board can consider in arriving at what it considers to be an appropriate settlement of the issues. In our view, there is probative value in this type of evidence, and there is not any basis to exclude that evidence from the Board's consideration in these circumstances. In so deciding, we point out that it is not necessary for the Board to implement the memorandum of agreement as executed, and need not follow the terms of that agreement, but it is entitled to be given weight in the Board's consideration, and we have considered the document in arriving at this decision."

However, in Re Town of Vaughan and Vaughan Professional Firefighters Association, R.R. Walker had the following to say:

"It is obvious that the memorandum of settlement has no legal force or effect without ratification. If the Town's position is correct then it follows that an arbitration board:

(a) ought to receive into evidence an agreement which the parties themselves, or one of them, have seen fit to reject; and

(b) once having received it, to consider that the memorandum of settlement, merely because it has been unanimously recommended by the negotiating committees, is evidence of a realistic basis for settlement and an equitable basis upon which to make an award.

This seems to the Chairman to be a step into unchartered waters. Surely it is implicit in the bargaining process that the negotiations between the parties which do not result in a settlement must be without prejudice to their rights before an arbitration board. If the negotiations themselves are

without prejudice then it is diffiuclt to see why a memorandum of settlement which is unsatisfactory to one of the parties is not subject to the same exclusion. If a memorandum of settlement, once unanimously approved by the negotiating committees, will ultimately result in being considered as the best evidence of what the parties would have arrived at in the beginning process or an equitable basis upon which to make an award then there would seem little point in the negotiating committees submitting the memorandum to their respective principals for ratification - or to put it another way, effectively the rights of the Association and of the municipality to accept or reject the memorandum of settlement would be sharply eroded.

It seems to the Chairman that there is a difference in the position of the parties where compulsory arbitration exists and where the parties have access to the normal rights of economic confrontation (ie. the strike or lockout). A party rejecting a settlement in the private sector knows that resort can then be had to either strike or lockout. That may or may not result in an improvement of the position of the objecting party. The objecting party however is not then bound by anthing that has occurred and the issues are then clearly open between the parties for resolution by bargaining. In the case, however, of those who are bound by the compulsory arbitration process it is clear that the right to object will be diminished if the arbitration board must consider as evidence the very settlement which was rejected.

There is no reason to suggest that the Association must automatically accept what its bargaining committee proposes for settlement - and that is the whole point of submitting the settlement to the Association for vote by its membership. For the municipality, only the Council has the right to expend it public funds. To suggest that the municipality, in rejecting a memorandum of settlement proposed by its bargaining committee, would be faced by an arbitration board assuming the memorandum of settlement to constitute an equitable basis upon which to make an award, would obviously erode the right of the Council to make a judgment on the expenditure of public funds - an erosion of the responsibility which the Council is elected by the ratepayers of the Municipality to discharge.

In the circumstances the board does not feel that it is appropriate to receive the memorandum of settlement into evidence."

Neither the Burkett award nor the two awards of Howard Brown, which generally support the position taken by the Employer, go so far as to suggest that the memorandum of settlement should be treated as conclusive. At best it is probative evidence of what was seen by the negotiating committees as a reasonable and appropriate settlement of the issues in dispute.

Section 11(2) of the Crown Employees Collective Bargaining Act provides that an arbitration board "shall consider any factor that to it appears to be relevant to the matter in dispute" including certain listed factors. We regard the fact of the memorandum of settlement concluded in this case as a relevant factor and are prepared to take it into account in arriving at our award. However, we do not stop there. Later in this award we comment critically on the quality of the evidence put before the Board relative to the task of comparing the wage performance of employees in the public sector both as against comparable performance in the private sector and within job classifications in the public sector. As a Board we have found it impossible on the basis of the evidence put before us, to conduct the kind of job match which is required of us if we are to discharge adequately the duty cast upon us by Section 11 of the Act.

Given that fact the existence of a negotiated memorandum of settlement assumes a very important significance. Both parties are represented at negotiations by experienced negotiators who, we must assume, are familiar with, or at

least have the capacity to become familiar with, the kind of comparative data which needs to be known in order to reach an informed conclusion. Consequently, where persons of that capacity themselves conclude a memorandum of settlement, admittedly subject to ratification by their principals, that memorandum should, in the absence of useful evidence to the contrary, be treated as very persuasive evidence of what constitutes a fair and reasonable settlement of the matters in dispute. This is not to say that the memorandum is conclusive. It does, however, establish a prima facie case, rebuttable by cogent evidence, of an acceptable settlement. In the cirucmstances of this case it would be difficult to defend, and to justify on the evidence before us, any substantial departure from the memorandum of settlement. By the same token we must not be taken as treating it as conclusive for that would be to fail to recognize the rights of the parties to reject that which their representatives concluded (erroneously in retrospect) to be acceptable.

Components of the General Wage Demands

The Union, in its general wage demands, seeks to redress perceived losses which its membership has suffered over the past few years vis-a-vis employees in the private sector. Those demands are made up of the following elements: Catch-up, an amount reflecting the projected rate of inflation over the year of the agreement, that is, 1980, and a productivity allowance. We shall deal with these in order.

1) Catch-up

The Union in its brief offered statistical data reflecting the extent to which employees in this category have either failed to keep up with the increases in the consumer price index or with wage performance in the private sector over the years 1976, 1977, 1978 and 1979. While there can be no question that the Union is entitled to seek to replace "losses" suffered through 1979, the year of the expiring contract, there are good reasons why consideration should not be given to "catch-up" for the years preceding 1979.

In each of those years, indeed since the advent of collective bargaining and compulsory arbitration in the public service, this category has successfully concluded an agreement with the employer on the matters then in dispute. This is the first year that a negotiated settlement has not been possible and compulsory arbitration sought. The difficulty which we have with the union's claim for a catch-up allowance for the years preceding 1979 is that it is, in effect, a claim to re-open those agreements that had been reached in respect of each of those years. Those agreements must surely be regarded as expressing a mutually agreeable settlement of the outstanding matters in dispute at the time of signing. When each of them were negotiated the negotiating committees for each party must be taken to have been aware of the extent to which

the then expiring agreement did or did not keep pace with either changes in the cost of living or relative improvements in the private sector. It was certainly open to the parties then to accomplish the necessary adjustment required to reflect any "falling behind" that may have been occurring. In fact they did, presumptively, make the required adjustment in the form of a negotiated agreement which, insofar as it was ratified, must be treated as mutually acceptable. Whether or not those earlier settlements were adequate at the time is beside the point. They must be presumed to be adequate and to have resolved all matters in dispute for the duration of their particular term.

2) Inflation during the contract year

Having dealt with the legitimacy of looking retrospectively at "erosion" once the years 1979 and earlier we now examine the legitimacy of looking prospectively at the erosion that will be suffered during 1980, the contract year. That is an item which, given the fact that the process of bargaining has not produced a contract until the "contract year" is, at the time of writing, three quarters concluded, is entirely a matter of speculation. The current increase in the CPI over the 12 month period ending as of the month of June 1980 is 10.1%. Therefore, the Board is not in the position of guessing at the projected rate of inflation over the contract year. For at least half of that year the rate of inflation is a known quantity and capable of being built

into an award without fear of representing a windfall to employees (in the highly unlikely event that there would be a substantial fall in the rate of inflation by the end of the contract year). The more difficult question, however, is whether account should be taken of the inflation that will occur in the contract year.

It is argued on behalf of the Employer that awarding an amount which would reflect continuing inflation throughout the contract year would operate as an incentive to the Union to delay the process of settlement in the expectation that, as and when the contract is concluded (by force of compulsory arbitration) it membership will receive a sizeable lump sum of money reflecting the amount of money "lost to inflation" from the start of the contract to the date of the award. We are somewhat sceptical as to the validity of that hypothesis. Firstly, one would take notice of the natural anxiety of employees when their conditions of employment remain uncertain. The natural desire of employees is, in our opinion, in favour of early rather than late settlement of their conditions of employment. Secondly, the pressure for early settlement is, if anything, greater during periods of continuing inflation. The monthly impact of that inflation, in terms of food costs, utility costs, rents, mortgages, etc., is felt from the beginning of the contract year. It is then that the bills have to be paid and we have some difficulty

in understanding how the prospect of some future lump sum payment (which will retroactively re-imburse employees for their losses to inflation) reduces to any significant extent the current pressures from inflation. Therefore, in our opinion, there are strong reasons for concluding that it is in the employees' interest to achieve an early settlement in order that current income can be brought back into line with current expenditure. The fears of the Employer that recognition of inflation during the contract year will delay settlement are, in our opinion, without reasonable foundation.

Indeed, an argument can be made that failure to recognize an amount for inflation during the contract year, if anything, acts as an incentive to delay on the part of the Employer. In such event the Employer is not required to come up with the money in respect of 1980 inflation until sometime in 1981 when, through the mechanism of catch-up, it restores the employee's purchasing power. If the mechanism for compensating employees for inflationary losses is restricted to retroactive catch-up, with no element of prospective compensation for the contract year, the Employer enjoys an annual windfall. Moreover, it is neither fair nor reasonable that employees should have to suffer the added costs of current inflation while the Employer is permitted to delay that impact for a year.

Of course, ordinarily the device for matching income with inflationary rises in expenditure on a reasonably

current basis is the COLA clause. Although we do not, in this case, award COLA since it is to be a one year agreement, we nevertheless believe it appropriate to build into the award an amount to reflect increases in the cost of living during the contract year.

3) Productivity

The Union claimed an amount estimated at 2% to reflect the just claims by its membership to share in the increase in national wealth. There are enormous difficulties associated with calculating the productivity of public service employees. We understand that a claim in respect of this factor, although frequently raised either in negotiations or at compulsory arbitration, has never been explicitly allowed. It is a matter of note that none of the other categories of this bargaining unit have explicitly achieved an increase which has been based on an allowance for productivity.

In view of this and in view of the practical difficulties involved in calculating the amount of such an allowance that should accrue to labor we decline to award anything in that regard.

Special Cases

We pass now to a consideration of the special cases. As indicated above the Union sought special treatment for a number of classifications whose members, in its submission,

had fallen disproportionately behind their counterparts in either the private sector or the public sector in other provinces. Additionally, claims were made that internal anomalies with respect to various job classifications within the Ontario Public Service should be corrected.

The difficulty which we have in dealing with this claim has to do with the reliability of the evidence put before us. That evidence purported to compare positions in the Ontario Public Service with equivalent positions elsewhere. In this connection the Union relied, over the Employer's objection, on a 1978 Civil Service Commission Survey on Rates of Pay. This is a report (which is prepared annually since 1975) of the findings of the Pay Research Section of the Civil Service Commission as a result of a survey of Maintenance Trades and Services Occupations in the Province of Ontario. It examines 17 classifications in the Ontario Public Service and compares wage performance, in various respects, with analogous positions outside the public service.

For our purposes it is unreliable in a number of respects. First, its findings are based on rates of pay in effect as of July 1, 1978, in excess of 2 full years prior to the date of this Award. Secondly, while it may provide a base for a broad comparison of wage rates paid over a range of positions, typically found in most establishments,

it is not a precise instrument for matching jobs in the public sector as against other jobs. It provides an overall picture of salary competitiveness by economic region, metropolitan area and specific industry, but does not allow one to isolate a particular job and draw reliable conclusions as to how employees in that job are performing relative to others performing the same or similar set of duties.

The Union also sought to make its claim for special treatment of certain cases on the basis of its own survey of rates paid to allegedly similar jobs. That survey examined various collective agreements and compared job rates paid in respect of classifications bearing the same or a similar title to that which obtains in the Public Service. Although these agreements, unlike the Civil Service Commission Wage Survey, have the virtue of being current, it is impossible to rely on them as providing a suitable job match for comparative purposes.

In the absence of any reliable evidence which would permit us to match a public service job with its private sector counterpart (and then to compare wage performance) we are unable to grant any of the special cases requested. However, we do not leave the matter there. Under the Employees Collective Bargaining Act boards of arbitration are directed to make comparative evaluations of "conditions of employment" in the public sector as against that "in similar occupations outside the public service, including

such geographic, industrial or other variations as the board may consider relevant." We have been frustrated in the discharge of our mandate in this case because of the lack of reliable evidence which would permit those comparative evaluations to be made. Nor is the Union to be faulted for not having produced the evidence. It simply is, as we understand it, not available.

Given this difficulty we would recommend to the parties that they reach an agreement on a common wage rate survey as an aid to facilitating both the bargaining process but also the process of compulsory arbitration should that become necessary. In particular we would refer to the arrangements under which compensation data developed by the Ray Research Bureau is made available to certified bargaining agents and employers under the federal Public Service Staff Relations Act.

Award

Having regard to the matters set out above we make the following award on the matters outstanding.

1. Term

The term of the agreement shall be from January 1, 1980 to December 31, 1980.

2. Wages

i) General wage increase

We have stated above that the negotiated memorandum of settlement establishes a prima facie case of what constitutes an acceptable settlement and that a departure from that settlement requires some justification. That memorandum established an average rate increase of 8.9%. In order to arrive at a conclusion as to whether or not this is acceptable it is necessary to examine it in relation to increases in the cost of living and to comparable settlements elsewhere. As far as increases in the cost of living is concerned we limit ourselves, for the reasons set out above, to 1979 and a portion of 1980.. Over 1979 the Consumer Price Index increased by 9.1%. Over the period from the date that the expiring contract was concluded (April 21, 1979) to April, 1980 the rise in the Consumer Price Index was of the order of 9.2%.

As far as other settlements are concerned we consider settlements within other cateogries of this bargaining unit

as well as settlements outside the Ontario Public Service. In the case of the former class of employees the successfully negotiated settlements range from an average wage increase of 9.0% in the Scientific and Professional Services Category to a high of 13.47% in the Correctional Services Category. (The average negotiated wage increases in the other category are: Administrative Services: 9.04%; Technical Services: 10.85%; Clerical Services: 9.3%; Office Services: 11.4%).

With regard to settlements outside the Ontario Public Service in the case of agreements without a COLA clause some care needs to be taken in establishing the basis for comparison. The Union submitted evidence indicating that for non-COLA settlements (in all industries except construction) reached in the last quarter of 1979 and the first quarter of 1980 the average percentage increase in wages was 9.3%. However, that reflects the percentage increase in the base rates, an increase which would be higher, in percentage terms, than an increase in average wates. The comparable figures for average wage increases in the same period is 7.8%. The percentage increase in the base rates negotiated in the memorandum of settlement was 11.1%.

On a comparison of the increases contained within the memorandum of settlement with those obtained in other categories in the bargaining unit and with those obtained in the private sector we are satisfied that the negotiated

increases for this category do, in substantial measure, permit the employees in this category to keep pace with rises in the cost of living and to maintain an acceptable parity with their counterparts both within and without the Ontario Public Service.

We do not, therefore, award any further percentage increase beyond that contained in the memorandum of settlement. However, we are concerned that the negotiated increases do not adequately account for the inflation which has continued in 1980 and to that end we conclude and award that the staged increases of $5.60/wk effective July 1, 1980 be accelerated in order that they take effect on January 1, 1980. In other words, effective January 1, 1980, there shall be a general wage increase of 7% to all classifications based on the rates in effect on December 31, 1979 and a further increase of $5.60/wk to all classifications in this category. On a rough calculation this acceleration would raise the average wage increase in this category from 8.9% to 9.8%. We conclude that, having regard to the factors outlined, this is a fair and reasonable settlement.

ii) Special cases

We have observed above that, on the basis of the data before us, we are unable to award any ad hoc adjustments for special cases. However, consistently with the approach we have taken to the general wage increase we also award

that the special negotiated increases for Pilots, Senior Air Engineers, Aire Engineers and Airfram Finishers, which took effect on July 1, 1980 under the memorandum of settlement, take effect on January 1, 1980.

3. COLA

Having regard to the fact that the term of the agreement is to be for one year and that the parties will, shortly after the issue of this Award, commence bargaining for the 1981 contract, the Board does not award a COLA clause.

The Board directs the parties to enter into a collective agreement reflecting the terms of this Award within three weeks of the date of issue of this Award

DATED IN London, Ontario this 16 day of September, 1980.

G.J. Brandt, Chairman

I concur/dissent

K.W. Preston, Employer Nominee

I concur/dissent

R. Cochrane, Union Nominee

T/13/81

IN THE MATTER OF THE CROWN EMPLOYEES
COLLECTIVE BARGAINING ACT

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE CROWN IN RIGHT OF ONTARIO
(THE WORKMEN'S COMPENSATION BOARD)
(the Employer)

and

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1750
(the Union)

AND IN THE MATTER OF A COLLECTIVE AGREEMENT TO BIND THE PARTIES FROM OCTOBER 1, 1981 TO SEPTEMBER 30, 1982

BOARD OF ARBITRATION: Kenneth P. Swan, Chairman
William Walsh, Union Nominee
James Noonan, Employer Nominee

APPEARANCES:

For the Union: Gil Levine, Research Director
G.O. Jones, National Representative
R. Carnovale, Local President
F. Mucci
C. Schachner
C. Greenidge
J. Fogg

For the Employer: C.G. Riggs, Counsel
J.M. Shields
J.I. Boyce
E.J. Baldwin
D.G. Veale
H.W. Wardle
J. Gray
C. Slater

AWARD

A hearing in this matter was held in Toronto on Saturday, January 23, 1982, at which time the parties agreed that the Board of Arbitration had been regularly appointed and had jurisdiction to deal with the issues in dispute between them relating to a new collective agreement to replace one which had expired on September 30, 1981. A number of changes to the old agreement, set out on pages 2-16 of the Employer's brief, have already been agreed. The parties also agreed that the new collective agreement should have a one year term. As a consequence, our award is that the new collective agreement be effective from October 1, 1981 to September 30, 1982, and that it contain the provisions of the expired collective agreement as amended by the matters agreed to by the parties and by the specific decisions set out below in respect of matters remaining in dispute.

1. Promotions and Staff Transfers

A particularly contentious issue between the parties relates to a proposal by the Union to modify clause 5.03 so as to require the Employer to interview the initially selected applicant for any posted job and also all applicants senior to the person selected before making a final choice. This proposal is in the context of an acceptance by the Union of Employer proposals on a number of other clauses of Article 5 which recognize other valid concerns of the Union, but those other proposals do not satisfy the concerns of the Union

that a senior employee who is to be passed over for promotion be given a full interview.

The difficulty with the Union's proposal is that it produces an extremely complex procedure which will be difficult to administer. There is now a "screening" process, which is not mentioned in the Union proposal but which the Union wishes to continue, by which unqualified applicants are weeded out. There is then to be, in the Union proposal, a preliminary selection based on interviews in person or by telephone. If someone other than the senior applicant is apparently to be selected, a selection board is to be established to interview all applicants senior to that applicant before a final selection is made.

The Employer reasonably points out that, with about 250 promotions a year, about half of which go to someone other than the most senior applicant, the administrative burden would be excessive.

While we appreciate the Union's concerns for fair promotion procedures, we are not convinced that the proposed clause, which in any case requires re-drafting to avoid the necessity to interview even unqualified applicants, will produce a degree of fairness worth the burden of administering the system. As a result, we have decided to reject this proposal. We hope the parties will give further consideration to a clause to meet their respective legitimate concerns.

2. Hours of Work

The Union proposes to reduce the weekly hours of work for employees on the Industrial Salary Scale from 37 1/2 hours to 36 1/4 hours, with no loss in take-home pay. The Industrial Salary Scale represents some 100 employees in various classifications, who alone among the members of the bargaining unit work on a 37 1/2 hour week. The Union's main argument, therefore, relates to internal comparabilities.

The Employer, on the other hand, points to the data relating to similar employees in the private sector and in the public sector, and particularly to hospital employees performing tasks identical to the present employees, most of whom are employed at the Employer's Hospital and Rehabilitation Centre in Downsview. The Employer also points to the possibility, not admitted by the Union, that it might become necessary to hire additional employees to ensure the 24 hour coverage necessary in some of these jobs, such as stationary engineers.

While the Union's argument has some appeal, we think it is important for arbitrators to remember that external comparisons are the basic underpinnings of an interest arbitration system, and must be balanced off against the competing interests represented by internal comparisons. There is not necessarily any injustice involved when members of one group, employed by the same employer, work 15 minutes longer each day than other employees; it is no more remarkable than that some employees

are paid more than others. In the absence of a compelling reason to reduce the hours, we decline to award the Union's proposal.

3. Overtime

The Union asks for an amendment to Article 8 to provide that when an employee works a double shift without warning prior to the commencement of the regular shift, the employee is paid at double time for the second shift. In the expired agreement, all overtime hours are paid at one and one-half regular rates.

The Union's proposal relies entirely on the justice of the case; no data supporting the occurrence of such a clause in other collective agreements is advanced. The Employer supplied data, but the Union properly pointed out that the data could be misleading. Most of the data related to initial overtime rates, and the Union observed that overtime over a certain number of hours in one day is often paid at higher premium rates.

While we do not think these situations occur very often, we think that working double shifts without notice is a considerable imposition on an employee's life, and that a higher premium rate is called for. What the Union is asking for is really minimal protection, and we therefore have no hesitation in awarding it. We leave the language to the parties to draft, subject to our remaining seized of

the matter to resolve any difficulties which may arise. Because of the difficulties of finding out what might have happened on long-past occasions of overtime, this provision is to take effect only from the date of this award.

4. Vacations

The Union makes a modest proposal on vacations, but one which, because of its nature, has the effect of making the vacation provisions awkward to administer. We were informed that the current proposal arose from an attempt to find a basis for settlement. While we would not like to discourage parties from such attempts, we make no award on this subject. We prefer to place greater emphasis on substantial monetary issues elsewhere in the agreement.

5. Maternity Leave

The Union proposes an amendment to clause 16.07(b), which provides for 17 weeks unpaid maternity leave, with the possibility of an extension to 12 months unpaid leave. The Union proposal would provide for 6 months maternity leave on full pay.

This proposal has required of us some considerable anxious consideration. We are of the view that paid maternity leave is an idea whose time is imminent, even if it has not yet come. The recent breakthrough in bargaining in this area by the Canadian Union of Postal Workers has been the subject of much discussion and some imitation, and paid

maternity leave has become one of the most interesting current issues in collective bargaining. As a matter of sexual equality, rights of women related to pregnancy and employment are central to any attempt to produce fairness in work opportunities for women. Nevertheless, despite our considerable sympathy for the principles involved, there are factors in the Union's proposal which make it impossible for us to award it.

First, much of the Union's argument is based on a comparison of Canadian maternity leave benefits with those available in Europe. It is important to point out that European systems are based on social legislation, not on employer-paid benefits. The proper forum to seek such reforms is thus the political arena, not arbitration. The same is true of the Union's demonstration that Unemployment Insurance benefits are insufficient to provide proper coverage for working women; the appropriate place for redress is Parliament.

Second, the Union makes no proposal for offsetting the cost of this benefit against the other costs of the collective agreement. In the Post Office negotiations, the cost had been calculated and the union had accepted the necessity to treat the cost of paid maternity leave as part of the total cost of the settlement. In short, it was there clear that other workers were bearing some, or even all, of the cost of the paid maternity leave program by

accepting lower increases in other cost-related aspects of the collective agreement. There is no justification for placing the entire cost of such a proposal on the Employer, even where the Employer is an agency of the Crown. Public sector bargaining outcomes and arbitration awards should be related directly to the private sector labour market, where cost-related benefits must be traded off against other such benefits. Moreover, the Union's calculations of cost of paid maternity leave across the national workforce appear to underestimate the cost to this Employer where, last year at least, the experience indicates a higher cost of paid maternity leave as a proportion of total compensation costs than the estimates advanced by the Union.

Finally, the Union's proposal, for 6 months paid leave at full salary, is entirely out of line with even the limited number of paid maternity leave provisions recently negotiated. The proposal has no service requirement to qualify for the paid leave, nor is there any requirement for a commitment to return to work after the leave. It also would provide paid benefits at a rate and for a period unequalled in provisions negotiated elsewhere.

We therefore reject the Union's proposal in its present form. We have, however, decided to take one small step towards achieving the protection which the Union seeks. We award that, upon her return to work after a pregnancy

leave, an employee who was entitled to receive Unemployment Insurance pregnancy benefits be paid an amount equal to two weeks Unemployment Insurance benefits at the rate paid to her during her leave, to compensate for the loss of earnings during the two-week waiting period imposed by the Umemployment Insurance Act.

6. Adoption Leave

This leave is directly related to the maternity leave proposal set out above, and would also have provided for paid leave. Adoption leave is a benefit not widely available under collective agreements, and yet one equally vital to the interests of employees who wish to expand their families through adoption. Moreover, Unemployment Insurance is unavailable for adoption leave, and the entire cost of the leave thus falls on the adopting parents.

We have not granted the Union's request for paid pregnancy leave, and so we shall obviously reject a proposal for paid adoption leave. The Employer has offered a provision identical to that found elsewhere in the Ontario Public Service, which provides for leave up to 12 weeks. In our view, this is insufficient; the clause should also provide for an extension up to 12 months, as is the case under Article 16 for pregnancy leave, in order to produce roughly the same treatment for childbirth and adoption, and we so award. For the present, we make no award about payment during adoption leave.

7. Temporary Assignments

The Union proposes to alter the present temporary assignments rule, Article 19, which provides a 5% differential after fifteen working days in the temporary job. The proposed clause would make the basic rate for the classification filled payable immediately, and would increase the rate to the maximum after 6 weeks in the higher classification. While we can see no justification for this latter aspect, we think the data indicates the need for an improvement in the provision. We award that the qualifying period be reduced to five (5) consecutive working days, and that the rate payable be the rate in the temporary classification next higher than the employee's current rate, or 5% more than the employee's current rate, whichever is greater.

8. Employee Benefits

The Union proposes to increase the share of dental plan and long term disability plan premiums borne by the Employer from 50% to 100%, and to move to current Ontario Dental Association Schedules for the former plan.

This is simply a matter of benefits to employees and cost to the Employer, and must be considered along with all of the other cost items with which we have to deal. Taking into consideration the data presented and the cost of the other wage and benefit improvements set out below, we have decided to leave the percentage distribution untouched, but to alter the dental plan to provide 1981 O.D.A. schedules to December 31, 1981 and 1982 schedules thereafter.

9. Meal Allowances

The parties are close to agreement on this issue based on an increase in the allowance set out in clause 23.04(b)(i) to $4.00. The Union also requests that employees who work overtime without advance notice, in circumstances where a meal is not available on the site and the employee is unable to leave the premises, be reimbursed for the full cost of a hot meal delivered to the site. The Employer asserts that this happens infrequently, but that is hardly the point.

We award that employees be reimbursed, against proper receipts, for the cost of a meal to the value of $4.00, plus delivery charges to the workplace, in the circumstances described above. We leave the drafting of suitable language to the parties, remaining seized to resolve any issues which may arise. For obvious reasons, this new provision is effective only from the date of this award; the increase to $4.00 in the meal allowance is retroactive to October 1, 1981.

10. Mileage Allowances

The parties are not far apart here, and we simply award the Employer's offer as set out on page 38 of its brief, which includes increases effective October 1, 1981 and April 1, 1982. The Employer's offer omits inadvertently the Northern Ontario rates from April 1, 1982, which should be 23.0¢, 19.0¢ and 15.5¢ per kilometer respectively, based on the formula employed to calculate the other rates, and we so award.

11. Wages and Salaries

Here also, the parties are not far from agreement. The Union is asking for an increase of 14.5% to all rates, with a minimum raise of $46.00 per week. The Employer offers 12.5% to all rates, with a minimum of $32.50.

We have considered the data presented to us by the parties, and have studied the arguments based on that data. In our view, the correct increase lies much closer to the Employer's offer than to the Union's request, since the Union simply has not made out a case for catch-up. While the real purchasing power of employee's salaries may be seen to have declined in the last few years, it had increased in earlier years; this simply mirrors trends in earnings from employment in the private sector.

We think that the right increase to recognize the interests of both parties, in light of the other cost items awarded, is 13% to all rates, or $34.00, whichever is greater. This should, of course, be retroactive to October 1, 1981 and be payable to any employee or former employee in respect of all paid time since that date.

This concludes our award, subject to the extent to which we have retained jurisdiction to deal with matters remitted to the parties. We thank Mr. Levine, Mr. Jones and Mr. Riggs for their able and helpful presentations.

DATED AT KINGSTON, Ontario this 12th day of April, 1982

Kenneth P. Swan
Chairman

I concur , subject to addendum. "William Walsh"
William Walsh
Union Nominee

I concur "J. B. Noonan"
J.B. Noonan
Employer Nominee

IN THE MATTER OF THE CROWN EMPLOYEES
COLLECTIVE BARGAINING ACT

AND IN THE MATTER OF AN ARBITRATION

BETWEEN: THE CROWN IN RIGHT OF ONTARIO
(THE WORKMEN'S COMPENSATION BOARD)

- and -

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1750

AND IN THE MATTER OF A COLLECTIVE AGREEMENT TO BIND THE PARTIES
FROM OCTOBER 1, 1981 TO SEPTEMBER 30, 1982

A D D E N D U M

The award sets out that the Union proposal for paid maternity leave "...required of us some considerable anxious considerations. We are of the view that paid maternity leave is an idea whose time is imminent, even if it has not yet come." And later: "As a matter of sexual equality, rights of women related to pregnancy and employment are central to any attempt to produce fairness in work opportunities for women." However, the award continues: "Nevertheless despite our considerable sympathy for the principles involved, there are factors in the Union's proposals which make it impossible for us to award it."

The award then sets out such factors in three areas, and I restrict my comments to the second of these factors, that "the Union makes no proposal for offsetting the cost of this benefit against other costs of the collective agreement."

I know of no "law" of collective bargaining that would require a Union to offer an offset for this or other required progressive moves. And we certainly were provded with no proof that such a "law" is universally applied.

...../2

Sometime after the board meeting and its executive sessions the media carried news of recent wage and contract settlements between Bell Canada and the Communications Workers of Canada on behalf of two very large units of employees, one of which is largely comprised of women. Whereas there was a scarcity of details, the concept itself for such a large company represents a breakthrough in the private sector, and should give impetus to the movement towards paid maternity leave in collective agreements. As of this time there is no public knowledge of any offsets provided by the C.W.C. to achieve the breakthrough, if indeed there were such offsets.

Perhaps in this round, between these two parties, it was a bit premature to expect giant steps in the area of paid maternity leave. Hopefully such an advance will not be far off. Meantime I am gratified that at least one step is provided under the conditions set out in the award, that will cause the Employer to make up to the employee returning from pregnancy leave compensation equal to the two weeks unemployment insurance she would otherwise not receive during the waiting period imposed by the Unemployment Insurance Act.

Respectfully submitted

"Wm. Walsh"

Wm. Walsh

ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL T/5/82

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Between: The Crown in Right of Ontario

as represented by the

Management Board of Cabinet

and

The Ontario Public Service Employees Union

Board of Arbitration: Kenneth P. Swan - Chairman
Peter Warrian - Union Nominee
Peter Camp - Employer Nominee

Appearances

For the Union: Mr. J. Licastro, Mr. R. Hebdon and others

For the Employer: Mr. W. J. Gorchinsky, Ms. E. Moolgoakar and others

Hearing: June 28, 1982

AWARD

A hearing in this matter was held in Toronto on June 28, 1982. The parties indicated that, in the circumstances, a brief award would be sufficient. We therefore award that the following be the disposition of all matters still remaining in dispute:

1. Term

One year (1) effective from January 1, 1982 to December 31, 1982.

2. Salaries

(a) Effective January 1, 1982, an increase of $10.00 (ten dollars) per week plus 6.85% (six point eight five percent) to all classifications in this category based on the salary rates set out in Appendix A to the Technical Services Category Agreement expiring on December 31, 1981 and in effect on that date.

(b) Effective June 1, 1982, a further increase of 2.75% (two point seven five percent) to all classifications in the category.

(c) Effective June 1, 1982, a further special increase of 3% (three percent) to the classifications of:

Communication Technician 1 and 2.

3. Retroactivity

The salary increases set out in paragraph 2(a) shall be retroactive and payable from January 1, 1982, and for the increases set out in paragraphs 2(b) and (c) from June 1, 1982, on a full or pro-rata basis, to all employees who are or were

in this category and shall apply to all overtime worked.

4. Implementation

The employer will make every reasonable effort to implement the salary increases as expeditiously as possible.

DATED at Toronto, Ontario this 28th day of June, 1982.

Kenneth P. Swan, Chairman

Peter Warrian, Union Nominee

Peter Camp, Employer Nominee

T/15/82

ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL

IN THE MATTER OF AN ARBITRATION UNDER

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

BETWEEN: The Crown in Right of Ontario
as represented by the
Management Board of Cabinet
and
The Ontario Public Service Employees Union

BOARD OF ARBITRATION:

A. Kruger	-	Chairman
S. Lewis	-	Union Nominee
P. Coupey	-	Employer Nominee

APPEARANCES:

For the Union: A. Bekerman & others

For the Employer: Mr. W.J. Gorchinsky and others

HEARING: July 5, 1982

This matter comes before this Board as a result of a failure of the parties to conclude a collective agreement through direct negotiations. Fortunately the parties have agreed on many matters. Only a few issues, albeit very important ones, are before us.

The Board has decided that on the basis of the evidence before us we are unable to award any of the following items requested by the Union:

- Stress Leave
- Parity in wages between Observation & Detention Home Workers and Correctional Officers
- Parity in wages between Supervisors of Juveniles and Correctional Officers

We urge the parties to continue discussions on the last two of these three items in the hope that they may be resolved before new contract talks begin toward the end of the agreement resulting from this Award.

The Union also asked for a large special increase for Trade Instructors 2 to narrow the gap between these employees and those classified as Trade Instructors 3. We did not receive sufficient information to decide this matter. On the basis of the evidence we have, we award a special increase of 3% to the Trade Instructors 2 over and above the increases for all groups indicated below. This increase shall be

.../2

effective January 1, 1982.

What remains are the two interrelated issues of wages and the duration of the Award.

The Union has asked this Board to award a two year agreement dramatically reducing the gap between the rate paid to a Correctional Officer 2 and an O.P.P. Constable, 1st class. It has further requested that all other classifications covered by the Award receive increases which would preserve the current absolute (not percentage) differentials among the various classifications.

The employer has urged the Board to make an Award covering only one year. The Board was asked to give heavy weight to both the current economic environment and to the pattern of increases for other groups in the Ontario public service and the private sector.

We received very lengthy written and oral submissions from the Union largely related to the difficult and unpleasant working conditions and requirements of these jobs. We will not attempt to summarize these arguments here except to note that we are satisfied that these employees perform their duties under very trying circumstances and deserve to have some recognition of this in their wages. Our Award reflects this recognition.

As to the matter of a link between the wages of Correctional

.../3

Officers and OPP Constables, we were not given sufficient evidence to resolve this issue. In particular we heard little about the tasks of the OPP Constable. However, we note that responsible officials of the Ontario Government, including the current Minister of Correctional Services and his predecessor, have accepted the legitimacy of such a link and have indicated support for narrowing the wage gap between these two groups. This has also entered into our decision.

Finally, we were impressed by the Union's argument that wages for Correctional Officers in Ontario have lagged far behind those paid to federal employees performing similar duties.

After careful consideration of all of the above, this Board awards that the new collective agreement be for a one year period effective January 1, 1982 through December 31, 1982. The wages paid to all classifications covered by this agreement (except for Trade Instructors 2 where we awarded a special increase) shall be adjusted as follows:

Effective January 1, 1982	-	11%
Effective July 1, 1982	-	4.5% on the rates prevailing prior to this award

The Employer shall contact by registered mail at their last known addresses all employees who have terminated their employment in these job classifications for whatever reason between January 1, 1982

and the date of this Award. These letters shall inform these employees of their entitlement to the retroactive increases and the requirement that they claim these funds within thirty days of the date the letters are sent. Failure to make such claims within this thirty day period shall relieve the Employer of any obligation to pay the retroactive increases to these employees.

This Board shall remain seized of all aspects of this Award for a period of thirty days from the date of this Award to determine any unresolved difficulties between the parties in the interpretation, implementation or administration of this Award.

DATED AT Toronto, Ontario
this 20th day of July, 1982

Professor A. W. Kruger
Chairman

I CONCUR —
PLEASE SEE ADDENDUM.

Mr. S. Lewis
Union Nominee

Mr. P. Coupey
Employer Nominee

ADDENDUM FROM STEPHEN LEWIS

Fundamentally, I would have wished for a better award. However, I have concurred in this one for four compelling reasons: first, it is, by a long-shot, the single best wage increase for any category of government employees in the year 1982 (the average for all other categories being 12.5%); second, it brings the differential between the Correctional officer and the OPP Constable down below 25 per cent for the first time in a decade; third, negotiations will re-open in a mere matter of months so that further deserved improvements can speedily be sought; fourth, it is probably the most which can be expected from an arbitration board at this time, in light of the current economic climate.

Given all of that, the correctional workers can feel thay they've made important progress at this arbitration, and that their arguments are being heard. Indeed, the reasons advanced by the Board for its decision provide a clear signal for the future.

Let me, therefore, take a little time to elaborate. The Board says: "We received very lengthy written and oral submissions from the Union largely related to the difficult and unpleasant working conditions and requirements of these jobs. We will not attempt to summarize these arguments here except to note that we are satisfied that these employees perform their duties under very trying circumstances and deserve to have some recognition of this in their wages. Our Award reflects this recognition."

That's putting it mildly. It became clear at the hearing that correctional staff in Ontario often work under abominable conditions. It is, in fact, a public scandal that the working environment - overcrowding, understaffing, shortages of material and equipment, stress,

inadequate security - should place such an intolerable burden upon these employees who labour, loyally, in the public interest.

This Board of Arbitration can't correct the shameful policies - that's a political problem. But we can take the consequences into account, as should subsequent Boards of Arbitration until conditions change.

The Board also says: "As to the matter of a link between the wages of Correctional Officers and OPP Constables, we were not given sufficient evidence to resolve this issue. In particular we heard little about the tasks of the OPP Constable. However, we note that responsible officials of the Ontario Government, including the current Minister of Correctional Services and his predecessor, have accepted the legitimacy of such a link and have indicated support for narrowing the wage gap between these two groups. This has also entered into our decision."

In large measure, this argument was at the heart of the union's case, and an impressive argument it made. OPSEU assembled a litany of judicial, political, and bureaucratic comment which spoke to a relationship between the Correctional Officer 2 and the OPP Constable, first class. When it is all put to-gether, the force of the material is irresistable:

1. In 1978, Judge Barry Shapiro, in his "Royal Commission on the Toronto Jail and Custodial Services," wrote as follows:

> "...over a period of, say, three to five years, there should be annual increments for correctional staff at the Toronto Jail to reduce the differential between a C.O. 2 and a first-class OPP officer to $1,000 a year in favour of the OPP officer."

2. On November 27, 1979, Mr. Glenn R. Thompson, Deputy-Minister of Correctional Services, sent a memo to all of his correctional staff. It read, in part, as follows:

> "With respect to the salary complaints of Correctional Officers, the Honourable Gordon Walker yesterday ... indicated his support for the view expressed by His Honour Judge B.B. Shapiro ... that the differential between the salaries of our Correctional Officers and police officers is currently too great and should be reduced over a reasonable period of time. The Minister has made these views known to the Civil Service Commission, and to the Chairman of the Management Board of Cabinet, and has been assured the situation will be given special attention during the upcoming Negotiations." [my emphasis]

3. On November 29, 1979, the Honourable Gordon Walker, Minister of Correctional Services said, in the course of legislative debate:

> "The real issue here is one of wages. It is fair to say that there is a legitimate complaint on the part of correctional officers in that there is a large disparity between what is being received by them now, about $16,000 per year, and what say, a first-class OPP constable might be receiving, $ 21,000 a year. We hope that gap is going to be narrowed. Not only do we hope it is going to be, but the chairman of management board has given an undertaking that he is prepared to extend a special consideration in that case with respect to salaries." [my emphasis]

4. On May 27, 1982, the Honourable Nick Leluk, Minister of Correctional Services said, in the course of the proceedings of the Standing Committee on the Administration of Justice: "As the OPP 1982 salaries have been settled, and those of the correctional group are still under negotiation, the differential is now considerably more, and that is about 43.8 per cent. Judging from the average level of settlements in the Ontario public service this year, I am confident that the percentage differential between these two groups will certainly not increase beyond the 1980 level and hopefully will further decrease."

What we have in all of these public pronouncements is

a strong and unequivocal sense of where wages should be heading.

It is no answer to scoff at these various views as uninformed or self-serving. As the award points out, two of the advocates are Ministers of the Crown responsible for Corrections. What's more, Gordon Walker says explicitly, and Nick Leluk says implicitly that the Management Board of Cabinet has been involved, and equally approves of narrowing the differential. There is, therefore, just no getting around it: whether it's negotiation or arbitration, the government is bound by its own words, and has a clear political obligation to improve the lot of correctional officers.

This arbitration board - to some limited extent - simply mirrors that obligation. The differentials between Corrections and OPP have, over the last several years, been as follows:

1973 - 36%
1978 - 32%
1979 - 33%
1980 - 27%
1981 - 30.5%

By giving the wage increase in this award, we reduce the differential, in 1982, to 24.5%.

Now I don't pretend for a moment that that adequately closes the gap. When Gordon Walker spoke in 1979, he suggested that the differential should be less than $5,000. This award, while reducing the percentage difference significantly, still leaves a gap of well over $5,000. But at least we're on the way to equity, and at least the salary for a Correctional Officer 2 has virtually reached $24,000 a year.

That's not nearly good enough; but it's a start. And I would hope that the reasons provided by this Board serve as a clear message about future expectations.

Finally, in our decision, the Board notes:"...we were impressed by the Union's argument that wages for Correctional Officers in Ontario have lagged far behind those paid to federal employees performing similar duties."

Again, we have a powerful case for the Ontario Corrections officer. These are clearly comparable jobs, and yet the end-rate for a maximum security Federal officer (and most provincial officers work in a maximum security setting) is $27,235 as of December 1, 1982, with an expiry date of March 31, 1983. It would therefore take, in the next round of bargaining, an increase of 13.7% for an Ontario Corrections Officer 2 just to reach parity with their Federal counterparts for the first three months of 1983. There would then be required a <u>further</u> substantial increment to keep pace for the rest of that year.

It seems to me that nothing less should do.

I have dealt with the arguments extensively because the Corrections Service in Ontario continues to fester with a deep and abiding discontent. Not all of the problems can be solved by wages alone, but if justice is to be done, the incomes of correctional officers must, in the immediate future, take a sharp leap forward.

Back in 1979, in the notable arbitration award which actually established Correctional workers as a separate category within the bargaining structure, the Chairman, Professor Harry Arthurs observed:

> "There is no doubt that a primary objective of the union ... is to secure higher wage levels for correctional employees. In correspondence with the union, in a statement in the Legislature by the Honourable Minister of Corrections, in its submission to this board of arbitration, the government

> has consistently indicated that it, too, wishes to improve wage levels for correctional employees. It can be said, therefore, that the parties share this common objective."

This arbitration simply gives that "common objective" a useful shove in the right direction and, I believe, sets the stage for what must be another substantial increase next time round.

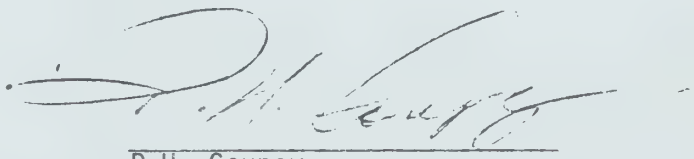
Footnote: There is a certain unreality about all of this with wage controls hovering overhead. However, I feel hopeful that all of the 1982 increase will be protected, and if trouble looms in 1983, well, at least the Correction Workers can meet it on equal footing with their other union colleagues in the civil service.

ADDENDUM July 19, 1982

The demand of the Union for parity or dramatically closing the gap between the rate paid to a Correctional Officer II and an O.P.P. Constable 1st Class, which having been dealt with satisfactorily in the Award, bears further comment.

The matter cannot rest with the viewpoint that "we were not given sufficient evidence to resolve this issue". It was apparent throughout the hearing that the Union's claim could not be supported on the basis of either fact, a historical relationship, or as a result of sound job evaluation techniques. While it was unfortunate that the Union's expectations had been fanned by statements made by senior government officials and other bodies reporting on the custodial service, these statements were probably made on a basis other than those that would meet the criteria mentioned previously.

The comparison of wages between the two categories appeared to be a favourable union bargaining comparison, and should be treated as such, in view of the lack of evidence to the contrary. It is my opinion, therefore, that the Board and its award has dealt with this issue conclusively.



P.H. Coupey
Employer Nominee

T/16/83

IN THE MATTER OF AN ARBITRATION
PURSUANT TO THE PROVISIONS OF
THE CROWN EMPLOYEES COLLECTIVE
BARGAINING ACT, R.S.O. 1980, C. 108
AS AMENDED.

B E T W E E N:

THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION

- and -

THE CROWN IN RIGHT OF ONTARIO, AS REPRESENTED
BY MANAGEMENT BOARD OF CABINET

BOARD OF ARBITRATION

V. E. SCOTT - CHAIRMAN

P. D. CAMP - EMPLOYER NOMINEE

F. L. TAYLOR - EMPLOYEE NOMINEE

APPEARANCES

For the Union - Joanne Miko - O.P.S.E.U.

- John Opper - Education Officer

- Jim Irwin - Education Officer

- Al White- Education Officer

- Ed Tate- Education Officer

For the Employer - W.J. Gorchinsky - Civil Service Commission

- M. O'Donnell - Civil Service Commission

- Dr. R. Graham - Acting Executive Director of Regional Services, Ministry of Education

A HEARING WAS HELD IN THIS MATTER

IN TORONTO ON OCTOBER 2, 1985.

A W A R D

This dispute centres around the salary level to be applied to the new classification of Education Officer.

In June of 1983, the parties agreed upon the new Class Standard of Education Officer. This new Class Standard was implemented by Order-in-Council dated October 31, 1984.

The differences arose when the Employer proposed that the salary range to be applied to the new classification should be that of the old Education Officer 2.

The Union's contention was that the range of the old Education Officer 3 would be more appropriate.

Since there was no agreement on the matter, the Union advised the Employer by letter dated July 4, 1983. that in accordance with Article 5.8 of the Collective Agreement they were going to proceed to arbitration.

Article 5.8 reads as follows:

> 5.8 When a new classification is to be created or an existing classification is to be revised, at the request of either party the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no agreement be reached between the parties, then the Employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration.

At the hearing, the Union presented a written brief, and both parties made oral submissions in support of their respective positions.

The Union stated that starting in the late 1970's the Education Officer 2 group requested treatment as a special

case. It was argued that throughout that period there were substantial changes in the role of the Education Officer.

The Union further stated that at one point in 1980 the Management negotiator at the bargaining table recognized that the "Special Case" for E.O.'s did have merit, and recommended to the Civil Service Commission that the Ministry rewrite the position specifications to reflect the changes in responsibility that had occurred.

The Union called three witnesses; Mr. John Opper, Mr. Jim Irwin and Mr. Al White, who took the Board through their various periods of service with the Ministry with the view to explaining how the position has increased in complexity and responsibility over a period of time.

Mr. Gorchinsky, on behalf of the Employer, called as a witness Dr. Ron Graham, the Acting Executive Director of Regional Services for the Ministry of Education.

Dr. Graham also directed the Board through the various changes in the role of the E.O. since the mid 1960's.

Upon being questioned as to whether the qualifications are any different today, Dr. Graham stated that there are minor differences which are not substantial, and also that the job is different today but no more difficult than it was in the 1970's.

Mr. Gorchinsky, in his argument cited section 12.2 (c) of the Crown Employees Collective Bargaining Act, which outlines certain factors to be taken into account by the Board.

Section 12.2 (c) reads as follows:

12.2 (c) the desirability to maintain appropriate relationships in the conditions of employment as between classifications of employees; and

He then submitted a document which showed that Education Officers received an increase for 1985 which gave them a salary of $55,114.89, while the next higher classification, which is excluded from the Bargaining Unit, is Regional Superintendant of Education (PM21).

This classification had a salary rate for 1984 of $56,054.00. Ms. Miko of the Union objected to Mr. Gorchinsky presenting these figures, and argued that the Board should not take them into consideration.

However, the relationship between E.O.'s and PM21's was first alluded to on page 7 of the Union's brief, wherein it was stated in part:

> "It is not the purpose of this argument to have E.O.'s further reclassified at PM21, but rather to point out that the compensation levels should indeed be brought closer."

To give any consideration to this argument, the Board naturally would have to be made aware of the differences in the rates. This information was provided by Mr. Gorchinsky's submission.

Having reviewed the old Class Standard of Education Officer 2, and the new description of Education Officer, it is the opinion of the Board that the role has become somewhat more complex, and the responsibilities are greater than they have been in the past.

These changes have been by evolution rather than revolution. This was confirmed by the competent testimony of all of the witnesses called.

To establish a proper rate that would reflect these

changes is very difficult, short of having a complete job evaluation study made.

We cannot at this time accept the Union's argument that the old Education Officer 3 rate is the appropriate one to be established.

The salary ranges presently in effect for Education Officer and PM21 are as follows:

Education Officer

Effective January 1, 1985 847.38 - 1,056.27

PED21

Effective April 1, 1985 863.17 - 1,117.24

The Board, after giving serious consideration to all of the submissions made, and keeping in mind the criteria of Article 12.2 (c) of the Act, awards the following salary ranges for the classification of Education Officer:

Education Officer

Effective April 1, 1985 857.64 - 1,077.40

The Board shall remain seized of this matter in the event of any dispute between the parties in relation to any aspect of the interpretation or implementation of this award.

Dated at Oakville this 28th day of February , 198 .

V. E. SCOTT, CHAIRMAN

F. TAYLOR, UNION NOMINEE

Dissent to follow

P. CAMP, EMPLOYER NOMINEE

T/17/84

IN THE MATTER OF AN ARBITRATION UNDER THE CROWN EMPLOYEES' COLLECTIVE BARGAINING ACT BETWEEN:

The Crown in Right of Ontario as represented by the Management Board of Cabinet

- and -

The Ontario Public Service Employees' Union

Before: David H. Kates, Chairman
S. Lewis, Union Nominee
P. Coupey, Employer Nominee

Appearances:

For the Union: A. Bekerman and others

For the Employer: W.J. Gorchinsky and others

Heard in Toronto, Ontario, on July 5, 1984.

AWARD

This matter comes before this Board as a result of the parties' failure to reach a wage settlement during their negotiations. On the parties' agreement this Board's mandate is to fix a wage rate for a one year period effective January 1, 1984. The parties in both their written and oral submissions have joined issue on the two principal items separating them from a wage settlement. They relate to the following:

> (i) The validity of the trade union's assertion that the Correctional Officer 2 (CO2) rate of pay should be pegged to the rate of pay of an Ontario Provincial Police Constable, First Class (OPP); and,
>
> (ii) The impact of The Public Sector Prices and Compensation Review Act, 1983 (Bill 111) on the determination of an appropriate wage rate.

Before embarking on an elaboration of these two issues it is helpful to point out from the outset that, except for the impact of Bill 111, the evidence and submissions put forward in these proceedings were substantially the same as advanced before a similarly constituted Arbitration Board that determined the wage rate for Correctional officers for the year January 1, 1982 through December 31, 1982 (hereinafter referred to as "The Kruger award"). In that award the Board granted a 15.5% salary increase for that one year period. In reviewing the Kruger award, it appeared to be the verdict of the Board to fix its wage settlement on the basis of three principal factors:

> 1) Correctional officers perform their duties "under very trying circumstances" and deserve to have some recognition of this in their wages;
>
> 2) The acceptance of the legitimacy of a "link" between the wages of Correctional Officers and OPP Constables and the validity of the trade union's claim for narrowing the wage gap between the two groups; and

> 3) The favourable "impression" given the trade union's argument that wages for Correctional Officers in Ontario have lagged "far behind" those paid to federal employees performing similar duties.

It is important to note with respect to item (2) that the Board appeared to accept the "legitimacy" of the link for pay purposes between the Correctional Officer 2 and the OPP Constable but nonetheless recoiled from extending its full endorsement to the validity of the trade union's "comparability" submission. I note for the record Mr. Coupey's dissociation from this aspect of the Board award. In this regard the "Kruger" Board writes:

> As to the matter of a link between the wages of Correctional Officers and OPP Constables, we were not given sufficient evidence to resolve this issue. In particular we heard little about the tasks of the OPP Constable. However, we note that responsible officials of the Ontario Government, including the current Minister of Correctional Services and his predecessor, have accepted the legitimacy of such a link and have indicated support for narrowing the wage gap between the two groups.
>
> emphasis added

Accordingly, in an effort to correct the evidentiary gap that was lacking before the "Kruger" Board the trade union's officials have prepared for our consideration a comparative job evaluation analysis for pay purposes between the Correctional officer (2) and the OPP Constable in light of the criteria set out in "Aiken's Scale". On the basis of the data that emerged from that study the trade union sought to persuade us to close what appears to be the ever-widening wage gap between the two groups. In the trade union's brief the results of its study and the consequent wage demand for the year under consideration is expressed as follows (at p. 69):

> Our job evaluation indicates a 10.6 percent difference in total points which favours OPP Constable, First Class. While there is a difference of 10.6 percentage points, in rating there is a difference of 24.5 percentage points in salary. To come within 10 percentage points, the union request will require an increase of 14.6%.

Notwithstanding the absence of any disavowal since the Kruger Board's award of the past statements made in support of the comparability principle by "responsible" officials of the Ontario Government, the employer before this Board has contested the validity of any such wage link. Indeed, the employer's representatives appeared to be highly critical of the pronounced legitimacy of the wage link between the two groups as expressed in the "Kruger" award and the antecedent studies, particularly the "Shapiro Report" that were cited in support thereof. Accordingly, the employer's position, in light of Bill 111, was that a wage increase to the Correctional Officers should be limited to 3.9% and, in any event, should not exceed the Provincial guideline of 5%.

At the hearing the Board, without questioning the integrity of the trade union's comparative job evaluation study, indicated that we could not give that study any evidentiary weight. Quite clearly, the document can only be viewed as an analysis that obviously could be construed for better or for worse as satisfying a predetermined purpose. We have noted that the trade union appeared to accept our concern and offered to arrange for, at the parties' expense, the preparation of an independent study in order to resolve the "comparability" issue "once and for all". We have seriously considered that overture but have concluded that such recourse would be impractical in the light of our being seized of determining a wage

dispute for a one year period expiring on December 31, 1984. Indeed, the parties presently appear to be on the threshold of meeting to bargain with respect to the next year's wage. In sum, the Board has concluded that it is in no better and in no worse a position than the "Kruger Board" was in when seized of an identical wage dispute. That is to say, based on previous pronouncements we have concluded that although there appears to be some legitimacy to establishing a link between the two groups for wage purposes, its validity still remains to be substantiated by appropriate evidence.

In dealing with the parties' submissions on Bill 111 and more particularly, its impact on our dealing with the parties' wage dispute, the Board prefers the statements made with respect to an Arbitration Board's obligations under that enactment in Re Brucefield Manor Ltd. and Christian Labour Association of Canada (Knopf) than those made in Re Thirty Participating Hospitals and Canadian Union of Operating Engineers and Its Participating Locals (Barton). That is to say, the Board views its obligation in reaching a conclusion with respect to wages, to consider the employer's ability to pay and the Province's stated guideline of limiting wage increases to 5% in a balance perspective with the equally important criteria contained in Section 12(2) of The Crown Employees' Collective Bargaining Act, 1980. We do not accept that the employer's ability to pay should be given greater emphasis in the light of these other relevant factors in reaching a wage award. The ability to pay factor in our opinion may only be treated as an overriding consideration in relation to other relevant factors if the evidence supports that notion. To the extent the Board's

jurisdiction is restricted in our making a wage determination we continue to be governed by the relevant provisions of the derivative statute. Accordingly, if a party establishes a legitimate claim for a substantial wage increase, irrespective of the employer's ability to pay, the Board's obligation is to discharge the duty for which it has accepted responsibility. Moreover, in the event the result arrived at is deemed offensive to an interested Governmental authority then the appropriate Legislative forum is available to it in order to remedy the situation.

In having regard to the parties' dispute in this case the Board has attempted to balance the proven factors warranting a fair wage settlement for Correctional Officers as previously expressed in the "Kruger" award with the realities of the economic climate that was articulated in the employer's brief. It is the objective of this award to achieve in the light of these factors a reasonably satisfactory wage settlement over a one year period at the termination of which the comparability issue may be resolved. That is to say, we continue to be impressed with the trade union's claim for a wage increase based on the factors recited in the "Kruger" award and particularly in regard to the unpleasant and adverse working conditions Correctional Officers are required to perform their duties. On the other hand, we have allowed, as other Boards have previously acknowledged, for some moderation in the amount of our award in the context of prevailing economic realities. In this regard had the trade union established a case for validating the "comparability" of the two wage groups hereinbefore discussed different considerations may very well have applied.

We urge the parties to resolve this pressing issue of comparability on their own during the course of their next negotiations. Failing that, the parties should be on notice that that issue ought to be dealt with "once and for all" at Arbitration in an appropriate manner.

In having regard to the foregoing, it is our conclusion that, effective January 1, 1984, and for the one year period expiring on December 31, 1984, a 7.5% wage increment should be given to all affected employees. For purposes of clarity this award is to be considered independent of any future determination with respect to other terms and conditions of employment conferred upon Correctional Officers.

With respect to the trade union's claim for wage parity with the CO2s for the Observation and Detention Homeworkers and the Supervisors of Juveniles and Correctional Officers we are of the view that such claims should be held in abeyance until the next round of negotiations at which time the principal issue of the wage linkage between the CO2 and OPP Constable should be finally resolved.

With respect to the trade union's demand that merit increments should not be "costed" in our wage award, that a premium be paid to bailiffs who oversee federal inmates and that an interest penalty be imposed upon the employer for any alleged delay in the finalization of this wage settlement we find no merit. These claims are accordingly rejected. Again, for purposes of clarity, the merit increase to which the employees are entitled is to be extended over and above our 7.5% general increase but is to be "costed" as part of our award.

As agreed to by the parties, the Board directs that they meet for the purpose of costing out this award for purposes of its submission to the Income Restraint Board in accordance with the requirements of Bill 111. We shall remain seized.

Dated this 31st day of August 1984.

David H. Kates

I concur "S. Lewis" (see addendum)

I dissent "P. Coupey" (see dissent)

ADDENDUM FROM STEPHEN LEWIS

It was tempting to contemplate a dissent to this award. My own strong inclination, based on the evidence, was to grant the Correctional Officers an increase of 10 per cent in order to bridge the gap significantly between Correctional Officers 2 and O.P.P. Constables. For six years now, since the days of the Shapiro Report, judges, politicians, senior civil servants and arbitrators have been acknowledging that a "link" does exist, and that the wage disparity constitutes a continuing injustice. There must come a time when the injustice is resolved: Correctional Officers cannot be expected to wait forever.

However, this arbitral award, in the face of very difficult circumstances, has three ingredients of sufficient strength to mute my passion for dissent. They make of the decision a defensible and important document.

First, the wage determination of 7.5%, while clearly less than the union wished, is still a quite respectable increase.

Second, the chairman has dealt with Bill 111 in appropriate and straightforward terms. He

has said what is clearly true: the question of the "employer's ability to pay in the light of existing provincial fiscal policy" is but one factor among many. When the other factors are more persuasive, they must surely supercede. The strictures of Bill 111 are merely a guideline, and the Provincial Treasurer himself has said repeatedly that arbitrators are not bound by the guideline; they are merely bound to consider it.

For my own part, I regard Bill 111 as anathema to the arbitration process. It not only undermines arbitral independence, but it is an attempt to apply a kind of wily statutory coercion to the wages and benefits of public sector workers. It deserves short shrift. This award is useful because it places Bill 111 in context.

Third, and perhaps most important, this decision sets the stage for the future. In quite unequivocal terms, the chairman urges the parties to solve the issue of comparability "once and for all". He is, in my opinion, entirely right.

I would hope that the government would squarely meet the issue during the course of the next contractual negotiations. Failing that, however, it is up to the union to take the initiative.

I fully recognize that that's what the union felt it was doing in the presentation of its own comparative job evaluation study before this arbitration board. The effort and the documentation were, in truth, impressive; but the problem is that any such material, prepared solely by one side, never carries sufficient weight. If such a study cannot be done jointly, then I would suggest that what is required is an <u>independent</u> job evaluation appraisal undertaken by an authoritative and recognized group or agency.

Given the history of the last several years, any future arbitration board would be hard-pressed not to take the results of such an evaluation seriously.

For the Correctional Officers there is of course an element of risk. One cannot pre-judge the outcome. But this award, in addition to the wage

increase for 1984, is simply saying: patience is wearing thin; resolve the festering controversy.

DISSENT

Re: O.P.S.E.U. and Crown/Ontario (Management Board of Cabinet) Dispute Concerning The Correctional Services Wage Bargaining Category

The majority of the Board has used the three issues originally raised in the Kruger award to justify the 7.5% wage increase.

With respect to the first and third issues, the fact that the Correctional Officers may perform their duties under very trying circumstances and that their wages may be less than those paid to federal employees performing similar duties does not, in my opinion, constitute good reason for awarding more than the 5% increase that they might otherwise expect. In any event, sufficient recognition of these factors was accorded by Kruger in his award.

With respect to the second issue, that is the legitimacy of a "Link" between the wages of Correctional Officers and O.P.P. Constables, the majority of the Board has stated in its award that "Its validity remains to be substantiated by appropriate evidence". It is of importance to note that the previous award, under Kruger, came to the same conclusion, and further, I stated in my Addendum that "It was apparent throughout the hearing that the Union's claim could not be supported on the basis of either fact, a historical relationship, or as a result of sound job evaluation techniques."

The majority of this Board stated that there is not a legitimate link between the Correctional Officers and O.P.P. Constables wages, other than that there exists a "favoura impression" to the Union's argument, and they failed to provide any substantiation of this as well as the other two factors.

Furthermore, scant attention was given by the majority to the prevailing economic realities, which are significantly different than at the time of the Kruger award. I might note that 2nd quarter statistics reported by Labour Canada indicate that settlement without C.O.L.A., have averaged 3.6%.

to the impact of the Public Sector Prices and Compensation Review Act, 1983 (Bill 111), I might suggest that the awarded wage increase takes no recognition whatsoever of the legislation which the majority has successfully ignored. Under the Act, Boards of Arbitration must consider the employer's ability to pay, not in a vacuum, but "in light of existing provincial fiscal policy", which criteria has been established as 5% maximum. I would have said that it is quite apparent that the Treasurer's criteria is of overiding importance and should only be overcome if some fundamental inequities could be established before the Board. In the case before us, it is the very failure of the Union to substantiate by appropriate evidence the validity of a link between the Correctional Officers and the O.P.P. Constables that prevents us from defining such an inequity as might require us to award more than 5%.

In conclusion, I would have preferred the approach in Re: 30 Participating Hospitals and Canadian Union of Operating Engineers and Its Participating Locals (Barton). Even more so, I would have given weight to the legislation above and beyond the current economic realities and I would have found no reason for awarding more than 5% in this case.

P.H. Coupey

August 30, 1984

T/2088

In the Matter of the Crown Employee Collective Bargaining Act

-- and --

In the Matter of An Interest Arbitration

Between

The Crown in Right of Ontario
(hereinafter referred to as the Employer)

-- and --

The Ontario Public Service Employees Union
(hereinafter referred to as the Union)

Re: Scientific and Professional Services Category

Board of Arbitration:

A.M. Kruger, Chairman
E.R. O'Kelly, Member
D. Taylor, Member

Appearances:

For the Employer: W.J. Gorshinsky and others

For the Union: J. Licastro and others

Hearing at Toronto, Ontario, August 30, 1984

The matter before this Board involves the appropriate salary increase for approximately 4300 employees in this category. After attempts to resolve the issue through negotiations failed, the matter was referred to this Board.

We received lengthy briefs from the parties and we have studied these briefs carefully. In our view, little is to be gained by rehearsing the arguments in those documents in our award.

The parties are agreed that the term of the new agreement be from January 1, 1984, to December 31, 1984, and we so award.

Before we proceed to a discussion of the appropriate salary increase, a few comments are in order concerning our view of the impact of Bill 111 on this Board. We reject the position that this Bill limits this Board to granting increases no larger than five percent. Rather Bill 111 adds to the list of factors to be considered by this Board under the Crown Employees Collective Bargaining Act section 12 (2) one further factor, namely "the employer's ability to pay in the light of existing provincial fiscal policy". Nothing in Bill 111 makes this an overriding consideration or even suggests the weight to be given to this factor relative to the four items listed in the Crown Employees Collective Bargaining Act.

Having said that, one must go on to reject the position of the Union on this matter. In our view the additional guideline in Bill 111 is not something that can be ignored by this Board. It must be given weight as one factor along with those criteria which have guided boards of arbitration prior to the enactment of Bill 111.

The Board received no evidence concerning the ability of the Employer to attract and hold qualified employees in this category at current rates. Nor did

.../3

we receive evidence concerning salaries for comparable occupations outside the public service.

We were provided with some evidence concerning rate changes for this category relative to other categories in the public service. The figures show that while this category received less than the rest of the public service in 1983, if one looks at a longer period these employees have received increases at about the same rate as those granted to other public servants in Ontario.

As for the issue of whether the rates for this group "are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the service rendered", we heard evidence on these matters. Nothing in that evidence leads us to conclude that these employees have been underpaid in the past and require any special "catch up" based on this factor.

As for the new factor added by Bill 111, both parties commented at length on this.

After considering all the factors including settlements in the private section, cost of living increases, past increases for this group relative to employees in the public and private sector, and the employer's ability to pay, we conclude that all salaries in this category be raised by 4.6% retroactive to January 1, 1984.

For employees who have left the service between January 1, 1984, and the date of this Award, we order the Employer to write them at their last known address to inform them of their entitlement, within fifteen (15) days of the date of this Award. Such employees shall have thirty (30) days after the mailing of such notices in which to claim their entitlement and not thereafter.

.../4

All retroactive pay under this Award shall to paid to employees no later than sixty (60) days after the date of this Award.

The parties shall present this Award to the Inflation Restraint Board along with their estimate of the cost of this Award. My own best estimate, which I submit under section 9 (1) of Bill 111 is that the cost is 4.6%.

This Board shall remain seised for a period of thirty (30) days from the date of this Award should the parties experience problems in the implementation of our Award.

Dated at Toronto, Ontario, this 27th day of September, 1984.

A. Kruger, Chairman

I concur/~~I dissent~~

E.R. O'Kelly, Member

~~I concur~~/I dissent

D. Taylor, Member

I dissent.

This award will do no more than offset the increase in the cost of living anticipated for 1984.

Restoration of purchasing power lost during 1983 due to the imposition of Bill 179, and maintenance of the Scientific and Professional group's position vis-a-vis other public service categories are fair and reasonable objectives, established in the Union's submission, which are demonstrably within the employer's ability to pay.

An award of at least 7 per cent would have been amply justified.

D. Taylor
Member

T21/84

IN THE MATTER OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

AND IN THE MATTER OF AN ARBITRATION

BETWEEN		THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION (The Union)
AND	-	THE CROWN IN THE RIGHT OF ONTARIO (The Employer)

AND IN THE MATTER OF THE TECHNICAL SERVICES CATEGORY

BOARD OF ARBITRATION	T.G. BASTEDO, CHAIRMAN B. SWITZMAN, UNION NOMINEE G. MILLEY, EMPLOYER NOMINEE
APPEARANCES FOR THE UNION	G.W. BRUCE H.L. ROBINSON T.W. BAXTER P. DUNBAR R. SMITH W. WOOD F. NICE D. GILDERS W. VANNESS
APPEARANCES FOR THE EMPLOYER	W.J. GORCHINSKY E. MOOLGOAKAR A. CUTLER V. QUINN T. WHEELER

A HEARING IN THIS MATTER WAS HELD AT TORONTO ON OCTOBER 24, 1984.

AWARD

This dispute arises as a result of the parties' failure to reach a settlement concerning the salary levels in the collective agreement covering the employees in the Technical Services Category in the Ontario Public Service. Notice to bargain for this category was given on September 28, 1983, with regard to the Agreement which expired on December 31, 1983. It is agreed by the parties that the term of the Agreement, which is covered by this award, shall be from January 1, 1984 to December 31, 1984, and we so award.

The bargaining unit consists of the 5,180 employees in the Technical Services Category. The Technical Services Category is one of nine categories that make up a service-wide bargaining unit covering some 825 classifications and 48,383 employees. Each of the nine categories bargains separately with regard to salary rates. The average salary for this category is $484.01 per week, which is the third highest of the nine categories as of December 30, 1983. Salary rates range from a low of $271.72 at the minimum rate in the range for Technician I - Traffic, to a high of $822.95 at the maximum rate in the range of Vocational Training Supervisor I.

Following notice to bargain, the parties did meet in direct negotiations prior to the submission to arbitration, throughout which the employer's position was that any settlement had to be within the provincial guidelines of 0-5% as set out in Bill III. This major factor could not be overlooked in these negotiations, and has resulted in this dispute being referred to arbitration pursuant to Section 10 of the Crown Employees Collective Bargaining Act.

Before proceeding to discuss the appropriate salary increase, we must consider the impact of Bill III on this Board. The employer's position that the Board cannot exceed the guideline increase limit of 5% is rejected. At the time of this decision, four arbitrators had dealt with the interpretation of Bill III in other interest arbitration awards. We are in agreement with the awards of D. H. Dates, in THE MATTER OF THE CORRECTIONAL SERVICES CATEGORY, H. D. Brown in THE MATTER OF THE INSTITUTIONAL CARE CATEGORY, and P. S. Knopf IN RE: BRUCE FIELD MANOR AND C.L.A.C. which have rejected the notion that arbitrators are limited in their authority to the imposition of the 0-5% range referred to as the provincial guidelines. Bill III simply adds one further factor, namely, "the employer's ability to pay in light of existing provincial fiscal policy", to the list of factors to be considered by this Board under Section 12(2) of the Crown Employees Collective Bargaining Act. There is nothing in Bill III that gives this criterion any more weight than the four items in the Crown Employees Collective Bargaining Act.

The following passage from the Brown award, sets out this Board's approach in applying S. 10 of Bill III:

> "While it is evident from the statements made by the Treasurer that the provincial fiscal policy with regard to salary adjustments for 1984 is limited by the guidelines established from 0-5%; it is the direction under Section 10 to give consideration to that policy which the government has applied to limit its ability to pay. We do not find however, that it is in absolute terms, an inability to pay if the guidelines should be exceeded. As the Treasurer stated in effect, if ordered to do so, the government will comply. What is necessary under the Act is that the arbitrator give consideration to that fiscal policy in determining the appropriate increase."

Or, as differently and perhaps more succinctly put by Stephen Lewis in his Addendum to the Kates award:

> "The strictures of Bill III are merely a guideline, and the Provincial Treasurer himself has said repeatedly that arbitrators are not bound by this guideline; they are merely bound to consider it."

This Board has followed these paths and while it has considered Bill III, it has not deemed itself bound by it.

The Board is appreciative to both parties for the exhaustive and excellently researched briefs which were submitted during the legal oral representations which were made by each party. The excellence of these briefs has made the Board's task much easier, and in particular, because

there were many similarities between the approaches of both sides it will be convenient to deal with the issues within the structure that was presented by the parties to us. Both sides are, of course, in agreement that public sector employees should not subsidize the community by accepting sub-standard wages. On the other hand, taxpayers should not be required to finance excessive wage increases for public sector employees nor should the public purse insulate public sector employees from economic realities. The second principle of significance with which both parties agree is that because interest arbitrators, in the words of Mr. Martin Teplitsky, Q.C. "attempt to emulate the results of free collective bargaining", therefore there must be a direct correlation between compensation in the public sector and compensation in the private sector. It is against these general statements that the parties put their two positions. The position of the employer can be briefly summarized by the statement that "the employer submits that extraordinary reasons must exist before the 5% upper limit is exceeded and argues that no such reasons exist in this case". The employer states that a general wage increase of 4%, which, is said by the employer to be the going settlement rate for the first quarter of 1984, would be entirely appropriate whether restraint legislation was in effect or not.

The Union's proposal for a general wage increase is based on five enumerated factors which were discussed at

length in the written submissions and which were repeated in the oral arguments. We propose to deal with each of these submissions, and in dealing with these submissions, measure them against the award which we propose to make. The award which we propose to make and do make is a general wage increase of 5% and as we said the rationnale for this award can be best seen in light of the Union's submissions.

The first of the Union's arguments is that there has been a "cost of living slippage" during the life of the last contract. In other words, the Union states that the rates of the Technical Services category were increased in the 1983 contract year by 4.9%, and that since the consumer price index in 1983 was "5.8% higher than in 1982" that therefore, the increase in the rates of pay of the Technical Services category was .9% below the increase in consumer prices. Therefore, there should be a "catch up" awarded. The statistics put forward are subject to some debate. First, the cost of living increase in 1983 varied quite significantly between the earlier part of the year and the latter part of the year, when it was 4.6% for the fourth quarter. Second, it is difficult to categorize adequately the rates of the Technical Services category in total. Because of the great disparity and the diversity within the Technical Services category, and because of the great number of classifications, it is possible to extrapulate

out of the total population of Technical Service employees, those larger groups of people which are compressed into a smaller number of classifications and therefore, to create a base which may not be entirely accurate in looking at the Technical Service employees as a whole. Last, it is by no means certain that even if the Technical Service employees did fall slightly behind the Consumer Price Index in 1983, that therefore they should be compensated in 1984. It is no longer an inviolate article of faith in wage settlements that the settlements must equate exactly to the cost of living increase. Also, there have been some recent years (for example, 1982) in which the wages of the Technical Services category have appeared to be substantially greater than the Consumer Price Index increase. Taken as a whole, an award of 5% would seem adequate to compensate the Technical Service employees, if in fact compensation were to be due, for a cost of living slippage when one considers all of the factors which are relevant to this award.

The second factor which the Union put forward as being of significance was the cost of living increase in 1984. This point was not pressed with any degree of vigour by the Union, for the rather simple and obvious fact that the cost of living increase in 1984, has been steadily falling and in fact, this award exceeds the current cost of living index. In fact, it is necessary for this Board to justify a wage settlement which will exceed the cost of living index

and we do so in dealing with some of the Union's further proposals.

At the beginning of the reasons for this award, we described the various occupational categories, nine in number which constitute the bargain units for wages for the Ontario Public Service. The Union's third point upon which it bases its proposal for a substantial increase in wages was the submission that there was a "gap" between the increases in the rates of pay of the Technical Services category and the increases received by other categories. The year 1980, was selected as the benchmark from which the gap, if any, was to be measured. We had some difficulty with this submission in the sense that there is such a wide range of services offered by the Technical Services category and such a substantial difference between the higher and lower scales. However, on the whole, if one isolates the top four categories (Scientific and Professional Services, Administrative Services, Technical Services and Correctional Services) only the Correctional Services has shown any substantial differentiation in the average rate of increase by category between 1976 and 1983. This Board shall have something more to say about the Correctional Services category when we discuss one of the other arguments put forward by the Union. Extrapulating out the Correctional Services category, the Administrative Services cumulatively have increased in the

time mentioned by a percentage of 77.4, the Scientific and Professional Services by 76.7 and the Technical Services by 79.6. There is no doubt that the Technical Services increase has not been as great as the increase granted to the lower paid employees in other services. However, it is this Board's view that a more analogous comparison is to the higher paid services. Also, there is no doubt that for some classifications within the Technical Services category, there has been slippage of a greater degree than for others. On the whole, it is the Board's view, however, that the award of 5% is a reasonable solution to the "slippage argument", and that award will maintain the Technical Services' category in step with most of the other categories.

The fourth ground upon which the Union based its proposal for a substantial increase in wages was the submission that the Technical Services category had made a substantial contribution towards the productivity of the Government of Ontario and specifically, within its own ranks. Accordingly, it was said that that productivity ought to be rewarded with a monetary increase in salary greater than what normally might have been reasonably anticipated. The productivity argument was put forward skillfully and at some length by the Union, and one cannot help but be drawn to the conclusion that the Technical Services category has indeed, become more productive and that the contribution that it has

made to the economic wealth of this Province has been great and is increasing. If one analogizes, as one has to, the salary increase which one might expect in the public sector in an interest arbitration to the current salary or wage settlements in private industry, surely it is also reasonable to state in an interest arbitration that if the employees have become more productive in the public sector then, if those employees were to be working in the private sector, then they would hopefully share some of the fruits of their increased productivity in that sector. At the same time, we have to be cognizant of what actually is occurring in the private sector. What is occurring is that the settlement rate in the private sector is falling and that it is currently less than 4%. If it were not for the productivity of the employees in the Technical Services category, then this Board would have had great difficulty, on all of the data put before it, in awarding an increase greater than 4%. In the Institutional Care Category award (H.T. Brown, Chairman), that Board found that the increased productivity of the employees in that category established an appropriate base to consider that factor as a rationnale for an additional increase to that which would otherwise be appropriate. It is the finding of this Board that, in a similar manner, the question of productivity is an important factor which has to be and in fact, has been taken into account and justifies an increase greater than 4%.

The last area of significance set out by the Union is a reference to benchmark settlements which have recently been negotiated or awarded for other groups of public service employees. The most significant of these is the award granted to the Correctional Service category. This award is clearly expressed to be a "catch up award" for the reasons which are set out in the award and which have to do with the relationship between the salary scale of the Correctional Officer and the Ontario Provincial Police Constable. This type of situation is entirely absent from the situation at hand and accordingly, that award has little relevance for this award. The other awards which were put to the Board related to certain settlements in the education sphere and at the best, it can be said that these settlements vary considerably from settlements very much below the award to be granted by this Board and various awards which are in fact, higher.

There is one final matter which needs addressing, and which was put forward by the employer. It should be emphasized that the remuneration granted to an employee is comprised of a number of different factors, only one of which is the actual salary. Working conditions and benefits are other ingredients in remuneration. This Board has no jurisdiction over working conditions and benefits and it is of course, obvious that in the event that working conditions

were to be improved, or if benefits were to be increased, that the total remuneration would be increased.

This Board therefore awards an increase of 5%, and adopts the implementation program that has been set out in various other awards relating to these categories. This program is as follows:

1. All employees, as of January 1, 1984, shall be entitled to be paid the increase herein awarded on all paid hours from that date.

2. Any employees as of January 1, 1984, who have since left employment for any reason, shall be entitled to pro rata share of the increase from January 1 to the date of their termination.

3. All new employees since January 1, 1984, shall be entitled to the increase from the date of their hire.

4. All employees shall be notified by the employer in writing, with a copy to the Union, within fifteen days from the release of this award to the parties, of their right to claim the retroactive wage increases. Such employees will have thirty days only from the date the notice is mailed to claim the retroactive adjustment. Such notices shall be mailed to the employee's last known address on the records of the employer.

5. The award shall be implemented within sixty (60) days from its release to the parties.

6. The parties shall present this award to the Inflation Restraint Board, along with their estimate of the cost of this award as required under Bill III.

7. This Board finds that the award of interest is not appropriate in the circumstances of this case and rejects that part of the Union's submission.

This Board shall remain seized until the agreeement is in effect between the parties.

DATED at Toronto, this 7 January, 1985.

T.G. BASTEDO, CHAIRMAN

B. SWITZMAN, MEMBER

"G. Milley"

G. MILLEY, MEMBER

(See addendum, attached)

Addendum of George Milley

While, in general, I concur with the chairman's award, his remarks on "productivity" merit further comment.

He states:

> "If it were not for the productivity of the employees in the Technical Services category, then this board would have had great difficulty, on all of data put before it, in awarding an increase greater than 4%.... It is the finding of this board that, in a similar manner, the question of productivity is an important factor which has to and in fact, has been taken into account and justifies an increase greater than 4%."

It is generally accepted by arbitrators that, in the words of Paul Weiler, "I do believe that Private Sector negotiations should play the dominant role in wage determination, at least as far as interest arbitrators are concerned." Indeed, in the present case, both parties indicated their acceptance of this principle.

The chairman appears to suggest that productivity in the Technical Services category has been higher than that in the private sector; and for this reason a wage increase above that granted to the private sector is warranted.

It is commonly recognized that productivity is one of the factors which is relied on to justify wage increases in private sector negotiations and it is one which forms part of the statistical data base used to establish wage trends in that sector.

Because productivity is an integral part of the criteria

used to justify wage increases in the private sector; and it being accepted that wage increases in the public sector should correlate to increases in the private sector; it is wrong to use the productivity factor a second time to justify wage increases in the public sector above that of the private sector. Put simply, one cannot use the same reason twice over to justify a wage increase.

Once the public sector departs from the statistical base used for wage increases in the private sector, (e.g.),assigns to the productivity factor an added weight, then the public sector can no longer rely, logically, on the private sector trend as a valid comparison in wage determination. It must seek to justify its positiion independently.

Indeed, the union sought unsuccessfully to show that productivity in the public sector has increased measurably in 1984 and that an even greater increase had occurred in the Technical Services category. The principal reason given for the alleged increase was that the number of employees had been reduced without a corresponding reduction in services. No evidence was introduced on matters such as quality of service maintained, the effect of technolcgical changes, the introduction of efficiency procedures and other features which directly affect productivity. It was an oversimplified treatment of an issue which has been one of the most complex and contenticus in Labour Negotiations for several decades.

No reason was shown why the productivity factor should be accorded

any special significance and, with respect, none should have been accorded.

January 2,1985

George J. Mitsey

T 22/84

IN THE MATTER OF AN ARBITRATION UNDER THE CROWN EMPLOYEES' COLLECTIVE BARGAINING ACT

BETWEEN: THE ONTARIO PUBLIC SERVICE EMPLOYEE'S UNION (hereinafter called the "Union")

AND

THE CROWN IN RIGHT OF ONTARIO (MAINTENANCE SERVICES CATEGORY) (hereinafter called the "Employer")

BOARD OF ARBITRATION: E. E. Palmer, Q.C., Chairman
G. J. Milley
D. Taylor

APPEARANCES FOR THE EMPLOYER: W. Gorchinsky & Others

APPEARANCES FOR THE UNION: G. Griffin & Others

The present arbitration arises out of a dispute between the parties as to the contents of their collective agreement for the calendar year of 1984. Essentially, all matters except those relating to wages were settled to the mutual satisfaction of the parties and only the latter issue comes before this Board of Arbitration, to which no objections to our jurisdiction were made. It might further be noted that the parties also agreed that there should be full retroactivity during the period of the operation of this collective agreement. Thus, aside from the question of the appropriate wages, the only question still in issue was whether interest should be paid on wages awarded to the Union.

Before turning to the arguments advanced by the parties, it is useful to set out their positions with respect to wages. In this regard, the demand of the Union is essentially that a wage increase of 8.9% be given to all employees; that this be made fully retroactive to 1 January 1984 and that "this retroactivity include an allowance for interest from that date." Additionally, there were three "Special Cases" for which special adjustments were requested. These were:

1. MS-02C Trades with voluntary certification = $12.00 per week;
2. MS-06 Steam Plant Engineers = $12.00 per week; and
3. MS-07 Offset Equipment Operators = 15%

As noted at page 81 of the Union brief, the Union also requests "that the amounts awarded to "Special Cases" be apart from the general wage increases which would likewise apply to the "Special Cases"."

The response of the Employer was to offer a general wage increase of 4% which they claim to be the going settlement rate for the first quarter of 1984 and which they felt was entirely appropriate irrespective of restraint legislation. As noted, they agreed to the term of agreement and the question of full retroactivity; but rejected any claim with respect to interest.

The Claim for Wages

The Union, as noted above, makes a claim for a general raise of 8.9%. The basis for this claim lies in four factors: slippage in the cost-of-living; an anticipated rise in the cost-of-living; the gap in raises accorded to other categories of Government employees; and an increase in the productivity of the present category. The Union argues that this would justify a far higher raise, but to be responsible requests something far less.

Most of these points are obvious and the supporting documentation is found in the Union brief and thus need not be repeated here. The fourth point, however, requires some elucidation. Noting that normal methods of computing productivity in the market sector of the economy are not apposite for the task in the public sector, the Union set out two methods of dealing with this issue. The first is to look at the number of civil servants providing service to the number of the public so serviced. On this basis, among other things, the Union suggests the increase in productivity since 1978 amounts to 21.8%, with an increase in 1984 alone of 10.2%.

The other method is described in the following manner [see Union Brief, p. 19]:

> The second and generally accepted method is to measure productivity of the economy as a whole. This can be done by dividing Ontario's gross provincial product expressed in dollars of constant value by the total number of people employed, adjusting for changes in the percentage of employees working full-time or part-time.

On this basis, the output per person employed in Ontario was 3.4% higher in 1983 than in 1982.

The Union also adverted to one other factor: The position of doctors in Ontario. They noted that this group was given increases amounting to 12% in 1983 and 10.2% in 1984. They further emphasized that the Treasurer of Ontario described this settlement, of which only 1.9% was rolled back, as "fair, reasonable and affordable." They indicated that to comment on the differences in treatment between the two groups would be "superfluous."

The Union also commented at length on the Public Sector Prices and Compensation Review Act (Bill 111). Much of this need not be discussed here as it is of a procedural nature. The main point of this part of the Union Brief, however, is directed towards Section 10(1), which states that: "...the arbitrator shall consider the employer's ability to pay in light of existing provincial fiscal policy."

On this aspect of the case, the Union made several points. First, they urged that no particular emphasis should be placed on the words "consider the employer's ability to pay." In their view, this adds nothing to existing arbitral jurisprudence in this area; arbitrators have always considered (i.e., put their minds to) the factor of ability to pay. Generally,

little or no weight has been given to this. Examples of this were given. Second, they discussed the implications of the words "in light of existing provincial fiscal policy." Here, of course, the key to the discussion is the Provincial policy set out in the following words [Union Brief, Exhibit 7]:

> The estimated average compensation for a compensation group on the last day of the restraint period should represent either no increase or an increase of up to 5% in the average compensation for the compensation group on the last day preceding the restraint period.

Briefly, the Union takes the view that this should not inhibit this Board of Arbitration in any way. While not arguing that this position should not be considered at all, it was stressed that one should not adopt this consideration as "an overriding one which must dominate [this Board's] deliberations", the words used by Professor Barton in Re Thirty Participating Hospitals and C.U.O.E. (11 April 84).

Finally, in a general way, the Union then canvassed trends in wages and salaries in the general economy to the end that such supports the Union claim. In the same vein, it was argued that the economy is improving and supports the ability of the Province to pay this amount.

The case of the Employer for its position of a 4% raise was as follows:

First, the Employer started its argument with the view that the increase granted in this case should be reflective in a general way of the present state of the economy to this end, they stated the words of Dubia, J., in the Metropolitan

Toronto Board of Education interest arbitration in 1975:

> "The economic climate of the day including consideration of the gross national product and the gross provincial product."

and

> "The interest and welfare of the public and the financial ability of those who are called upon to pay the cost of the services being rendered."

and

> "One cannot ignore the timing of this arbitration. Every award of an arbitrator must have regard for the economic climate of the day. One need not be an economist to appreciate that the economic climate of today, even apart from the Anti-Inflation Act, as a matter of prudence at least, commands a restraint on all of us. This applies equally to the public sector as well as the private sector. Everyone is concerned about the increases in costs of providing the services rendered by those in the public service."

The Employer then goes on to set out numbers of statistics which tend to show, in their view, a rather sluggish economy. While there is some improvement, it was urged that there were clouds on the horizon that showed an uncertain future.

Further, as supportive of this view, the Employer argues that Bill 111 limits this Board to increases of no greater than 5%. In short, they claim [Employer Brief, p. 11]:

> The new restraint program established a guideline range of 0 to 5 per cent for average increases in compensation for a group. Within a group, anomalies can be resolved as long as the average does not exceed 5 per cent. Compensation is defined to include wages or salaries, benefits, perquisites and wage or salary increments.

It is within the foregoing limit, then, that the Employer says the foregoing factors should be considered. Indeed, they go further and argue that total compensation (i.e., fringe benefits) must also be considered. Moreover, the effect of this award upon the Employer's general obligations to provide service to the public generally. This appears to stem from the view that [Employer's Brief, p. 17]:

> Not only does the Act require an arbitrator to consider the employer's ability to pay, it also requires the arbitrator to state his opinion as to the effect of his award on the employer's ability to pay. Therefore, a superficial approach does not comply with the requirements of the Act. Arbitrators must meet the issue squarely and give effect and meaning to the law.

In result, then, it was put forward that the above reasoning supports the Employer's offer.

Resolution of the Wage Issue

Having considered the foregoing, it is the view of this Board that the appropriate percentage increase for wages in this category should be 5.5%.

In coming to this conclusion, we have not only taken into account the section of Bill 111 set out above as well as those factors set out in Section 12(2) of the Crown Employees Collective Bargaining Act, R.S.O. 1980, c.108. We would note with respect to the former that we see no reason to give this any priority over the latter factors. Similarly, we accept the general position that the Provincial guideline of 5% is just that - a guideline. It is not a limit. The Provincial Treasurer has made that clear.

It is also perhaps appropriate to comment upon the language relating to "ability to pay" in Section 10(1). In its broadest sense - the one suggested by the Employer - it is almost impossible for a board of arbitration to give adequate consideration to this matter. While in one sense the taxing power permits the Employer to pay virtually any increase given, such would be too facile an approach to take. However, to adequately consider what effect an award will have on the ability of the Province to carry out its other programs and undertakings is an almost impossible task in the normal interest arbitration: among other things, there are far too many unknowns. Notwithstanding that, the present increase would not appear to be so significant as to impair the Employer's budget in any significant way.

Finally, we would note that it is our view that this increase does reflect the various factors put forward by the parties. In our view, this is especially the case with respect to the comparisons which can be drawn with the private sector.

Special Cases

In this regard, without dilating at length on the arguments of the parties which are set out adequately in their Briefs, it is our view that these requests should be denied. In our view, this is not an appropriate time to do this unless the clearest case for such is made out. Here it was not.

The Question of Rétroactivity Interest

There seems to be no dispute between the parties that there should be full retroactivity to 1 January 1984 for all employees who are or were in this category. The Union, however, also requested "interest at the prime rate to be paid within

thirty (30) days of the date of implementation of the Board's award." At the hearing the Union clarified this positon to note that it was only asking for payment of interest starting sixty days after the issuance of the award. This seems eminently sensible and this is granted.

Conclusion

The foregoing, then, is our Award. The parties shall present this Award to the Inflation Restraint Board, along with their estimate of its cost. Given the nature of our decision, the Board's best estimate, which we submit under Section 9(1) of Bill 111, is that the cost is 5.5%

The Board shall remain seised of this matter for a period of sixty (60) days from the date of this Award should the parties experience problems in implementing this Award.

DATED at Lynden, Ontario, this 25thday of December, 1984.

E. E. Palmer, Q.C.

I concur

G. J. Milley

I concur/dissent

D. Taylor

Re: Award in T/22/84 - A dispute concerning the OPSEU and Crown/Ontario: Maintenance Services Wage Bargaining Category

Dissent of Don Taylor - Union Nominee

I dissent.

I agree with the reasoning of the award, but I believe the amount of increase should have been higher. In addition to the other supporting arguments presented, evidence was received by the Board which demonstrates that similar occupations, both in the public and private sectors, have enjoyed higher rates of increase in wages over recent years.

Addendum from George Milley

While I am in general agreement with the award, there are two aspects which, while not warranting a dissent, merit comment:

> The wage increase of 5.5% is on the generous side; and the payment of interest starting sixty days after the issuance of the award would not appear to be justified.

WAGES

The award is said to reflect the various factors advanced by the parties, especially with respect to the comparisons which can be drawn from the private sector.

A noted arbitrator, Paul Weiler, recently said:

> "Still, I do beleive that private sector negotiations should play the dominant role in wage determination, at least as far as interest arbitrators are concerned. If the results of free collective bargaining are to be the norm, we should look to the compensation bargains which are struck by unions and employers who are directly exposed to the forces in the market economy, in whichever direction this standard may take us."

In the instant dispute, both parties indicated their acceptance of this philosophy.

Of the four factors relied upon by the union in their claim for a general wage increase: slippage in the cost-of-living; the gap in raises accorded to other categories of Government employees; an anticipated rise in the cost-of-living; and an increase in the productivity of the present category; only one factor was endemic to the public sector alone.

Of this one factor; "the gap in raises accorded to other categories of Government employees", the union did not prove its contention and failed to show that this factor, of itself, justified a wage increase.

The three remaining factors are criteria which are constantly in contention and under the microscope in private sector negotiations. In a direct co-relation between wage movements in the private and public sectors, the former becomes the bell-wether for increases in the latter.

Recent wage increases, without COLA, to employees in the private sector, in Ontario, were as follows:

1983 - last quarter	-4.0%
1984 - first quarter	-4.0%
1984 - second quarter	-3.9%

In the circumstances, the award of 5.5% is somewhat generous. Indeed, it requires a fertile imagination to justify even an increase of 5.0%.

PAYMENT OF INTEREST

No evidence on the merits of this request, other than the asking, was advanced by the union. And no data whatscever, respecting its currency in either the public or private sectors was submitted. This issue, like the others, is one that must bear the test of comparison with the private sector. Such a practice

is not known to exist in wage settlements in the private sector and, in my opinion, it should not have been introduced here. Additionally, the question is raised whether such a matter falls within the purview of the board's authority.

Interest payment is in the nature of an employer penalty to forestall tardiness in implementing the award. In the light of the employer's commitment to implement the award as expeditiously as may be possible, it would appear to show some insensitivity to the fact that, procedurally, arbitral awards, with consequent delays, must be submitted to the Inflation Restraint Board before finalization. Considering the recent spate of arbitration awards in this public sector, there is no justification to penalize the employer for a delay over which he has little or no control.

For these reasons, and in the light of the wage increase granted, I would have denied the request for payment of interest.

December 24,1984

George I. Mitchell

T23/84

IN THE MATTER OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

AND IN THE MATTER OF AN ARBITRATION

BETWEEN	THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION (The Union)
AND	THE CROWN IN THE RIGHT OF ONTARIO (The Employer)

AND IN THE MATTER OF THE INSTITUTIONAL CARE CATEGORY

BOARD OF ARBITRATION	H.D. BROWN, CHAIRMAN S. LEWIS, UNION NOMINEE F.T. COLLICT, EMPLOYER NOMINEE
APPEARANCES FOR THE UNION	A. BEKERMAN S. USHER L. ROBINSON C. SCHENK G. SALOVAARA B. DOYLE E. BRATHWAITE D. COOK J. HOLUKA R. CORBIN
APPEARANCES FOR THE EMPLOYER	W.J. GORCHINSKY E. MOOLGOAKAR L. STERMSEK D. VALLIKOFF J. WALLACE

A HEARING IN THIS MATTER WAS HELD AT TORONTO ON AUGUST 21, 1984.

AWARD

This dispute arises as a result of a failure of the parties to conclude an agreement between them concerning the salary levels in the collective agreement covering the employees in the institutional care category of the Ontario Public Service. Notice to bargain for this category was given on September 28, 1983 with regard to the agreement which expired on December 31, 1983. It is agreed by the parties that the term of the agreement which is covered by this award, shall be as and from January 1, 1984 to and including December 31st, 1984.

The bargaining unit consists of 5,476 employees in this category, the employees in which are involved in the care of patients in the Ontario Psychiatric Hospitals, students in the school for the blind and deaf and mental retardation centres. The classifications involved are as follows: ambulance officers, child care assistants, child care workers, counsellors, residential life, hospital attendants, instructors, occupational instructors, recreation and crafts, medical assistants, psychiatric nursing assistants, residents, counsellors, social work assistants, trainees. Of the foregoing categories, the majority of the employees are in the classifications of

counsellors, residential life and psychiatric nursing assistants. There are nine categories relating to the employees of the Province, which are bargained separately with regard to the salary rates. The average salary for this category is $388.63 per week, which is the sixth highest of the nine categories as of December 30, 1983. The salary rates range from a low of $266.45 at the minimum rate in the child care assistant to $522.77 per week at the maximum for child care worker 4. Following notice to bargain the parties did meet in direct negotiations prior to the submission to arbitration, throughout which the Employer's position was that any settlement had to be within the provincial guideline of 0 - 5% as set out in Bill 111. This obviously was the major consideration in these negotiations and the point of issue between the parties which could not be overcome and therefore the dispute was referred to arbitration pursuant to Section 10 of the Act.

The issue submitted to the Board by the Union and it demands are as follows;

1. a general wage increase of $1.10 per hour to be applied uniformly to all the employees in the category

2. an allowance for hazardous working conditions amounting to $1,200.00 per year

3. a provisions of four rest days per year on a non-accumulative basis to provide employees with an opportunity to recover from the effects of occupational stress

-

4. retroactivity for all employees as at January 1, 1984, with interest

The Board is in agreement with the Employer's position that the special cases referred to in the Union's submission for environmental hazards and rest days, fall within the category of working conditions, which constitutes a separate heading of bargaining between the parties and which is excluded from this Board's consideration thereby. Accordingly the Board finds that those two items are not before it for determination in this arbitration and will not make any award under those headings.

That leaves one issue (other than retroactivity) remaining for our determination which is simple to state, but such simplicity does not lead to a ready solution of what has become a very difficult year for wage bargaining in this Province and elsewhere in the country as a result of previous mandatory wage controls and wage restraint legislation in effect for

1984 and the general economic conditions facing both the public and private sectors. In that regard we have been provided extensive and detailed briefs by both parties to support their positions on this issue which the Board has considered at length following this hearing in consideration of this award.

We must first deal with the criteria on which this Board can consider and has acted in determining this issue. The Employer's position has been throughout, that the Board cannot exceed the guideline limits of Bill 111 and refers specifically to section 10 (1) thereof which is, " every act or regulation that requires or permits an issue that arise in collective bargaining by or on behalf of employees to whom this part applies to be submitted to or determined by arbitration, shall be deemed to include a provision that the arbitrator shall consider the employer's ability to pay in light of existing provincial fiscal policy." At the time of writing, three arbitrators have now dealt with this Act to some extent in arbitration awards, one of whom (Kates) in the dispute concerning the provincial correctional services category. Professor Barton in an award dated April 11, 1984 in Re: 30 participating hospitals and the Canadian Union of Operating Engineers, found that the criteria of the Act was overriding and stated,

> "Bearing in mind this legislation, our position here is that this criterian is an overriding one which must dominate out deliberations and should the Union wish an increase in compensation higher than that set out therein, it should specifically make a strong case for such an increase."

Subsequently in an award dated May 7th, 1984 (Knopf) in Re: Brucefield Manor and C.L.A.C., referred to the Public Sector Prices and Compensation Review Act which created a restraint period for the 12 month period following the control period under the Inflation Restraint Act and found that the requirement to consider the ability to pay, does not create any new responsibilities for Boards of Arbitration, as this concept has not been previously ignored in the light of any financial evidence put before it. In that award, the Board said, "we have attempted to ensure that the ability to pay was also balanced at all times with the claim to the employees to a fair and equitable wage. The Public Sector Prices and Compensation Review Act, does not take this responsibility for balancing these interests away from the Board of Arbitration." That statement was approved in the Kates award in which, as we are now aware, the Board awarded an increase of 7.5% for that category for the reasons specifically set out

in that award. The significance for the purposes of this discussion is that the Board in that case did not find that it was unalterably bound by the provincial guidelines of Bill 111 and based its decision on certain special circumstances it accepted in that case. Indeed, even the Barton award appeared to leave that possibility open if in its terms, the Union made a strong case for such an increase. We would take it that at least two arbitrators, have rejected the notion that arbitrators are limited in their authority to the imposition of the 0 - 5% range referred to as the provincial guidelines.

We also find that we are not so bound and do have an independent function provided under the Crown Employees' Collective Bargaining Act to determine all matters in dispute between the parties within the scope of the collective bargaining referred to in Section 12 (1) of that Act. In so doing, the Board is required by Bill 111 to consider, "the Employer's ability to pay in the light of existing provincial fiscal policy" as one of the factors relevant to the decision it must reach. The concept of consideration of an employer's ability to pay increased wages, is not new and can be in some circumstances, significant, but generally arbitrators have given little weight to that as a controlling criteria. To "consider" as referred to in that factor, means to give some careful thought in the context of the

dispute in which that term is used. Under Bill 111, the direction is that the ability to pay must be considered in the light of the provincial fiscal policy which takes the meaning beyond just a failure of the Employer to want to pay any increases which may be imposed into the practical area of consideration of the economic factors which confront the Employer and therefore its employees which can reasonably be taken into account by an arbitrator. Without detailing all of the public statements of the Treasurer of Ontario referred to in the briefs of the parties and to the various opinions expressed in the Press and by the parties themselves at the hearing concerning what the fiscal policy encompasses and may mean, in general terms we find that the provincial government through this Bill, gave notice that 1984 would continue to be a year of wage restraint as a result of its forecasts concerning unemployment, economic activity and real growth in the Province and that while free collective bargaining was not to be limited as it had been under the Inflation Restraint Act, parties to a collective agreement and arbitrators who are invested with the authority to set terms of a collective agreement, must pay attention to that specific concern expressed by the Treasurer in his budget statement and as carried forth in the reporting function of the parties and the arbitrator to the Inflation Restraint Board. We are not bound to apply

the provincial fiscal policy as a mandatory requirement, but we are required by this legislation to keep that direction in mind when determining compensation. The Board therefore is not required by the legislation to apply a singular criteria of ability to pay and is not constrained to impose guidelines as if they were mandatory controls, as in the Inflation Restraint Act. Where therefore the Board is satisfied on the submissions made to it by the parties and on all of the relevant factors that such a Board in determining an interest dispute would normally take into account, that a wage increase is justified, it can set the amount of the increase as it determines which may either be within or exceed the provincial guidelines and it will be binding on the Employer.

While it is evident from the statements made by the Treasurer that the provincial fiscal policy with regard to salary adjustments for 1984 is limited by the guidelines established from 0 - 5%; it is the direction under Section 10 to give consideration to that policy which the government has applied to limit its ability to pay. We do not find however that it is in absolute terms, an inability to pay if the guidelines should be exceeded. As the Treasurer stated in effect, if ordered to do so, the government will comply. What is necessary under the Act is that the arbitrator give consideration

to that fiscal policy in determining the appropriate increase. But for budgetary and control reasons, the province has attempted to restrain wage increases in the public sector to decrease or retard the pressure to catch-up what was deemed to be lost during the mandatory control period to those limits. It is also clear that during the year a 5% increase has become a base and not the end of a range for salary increases in the public sector. While therefore the Employer argued that any increase to base rates should be less to take into account the guidelines and the cost of benefits, this Board is not involved in that area and can only assume there is a cost factor applicable to present benefits. We have found that the Board is not prohibited from exceeding the guidelines, but in view of that restraint policy and having regard to the wage settlement data in the Province, there must be established a compelling need for special consideration of this group of employees to justify an award in excess of the guidelines. These are not the overriding factors as suggested in the Barton award, but must be taken into account in the balancing of the interests of the Employer and this category of employees in the provincial sector. We feel it is important to recognize the areas in which these employees should be assessed, but it is also important to understand that in a year of restraint covered by Provincial Guidelines, those

headings cannot be given the same weight in the assessment of salary compensation as they might be in other economic circumstances. It is that balance which we have attempted to achieve for this one year agreement. We do not believe that those headings which we have identified can be lumped into the guideline range which is basically a maintenance of present values on the basis of forecasts prior to 1984, but rather we are satisfied that some increase in that range is justified for these employees.

The Union in this case supports its submission for a wage increase which would amount to about 14.2% on the average on the basis of covering inflation and on the productivity increase applicable to employees in this category. At the time of the hearing, it was stated that the inflationary factor was 4.6% which now is somewhat less. As to the productivity factor, the Union suggested a 6.5% increase to take into account the reduction of more than 13% of employees in this category while the numbers of admissions, patients and average daily population had increased from 1982 to 1983. The Union provided a table expressed in terms of output for employees with regard to those institutional population figures. It was argued therefore that the working conditions relating to the members of this bargaining unit had deteriorated rapidly and this is one factor

which is appropriate for the Board to take into account. In addition, it was indicated that the employees in this category have fallen behind from 1% - 1.5% of the wage settlements in the public and private sectors for 1983 and on the average is 22% less than the average weekly salary in correctional services category and 11% behind the maintenance services.

On the other hand, as recognized by the Union in its brief, the object of interest arbitration is to approximate as reasonably as possible, the outcome which would be reached through free collective bargaining and in that regard comparisons to the private sector were appropriate to indicate the community rates it stated, "in the Union's review, general trends in private sector collective bargaining are the most meaningful external benchmark, because they are market determined and applied to a large proportion of the labour force. It is the Union's view that the only appropriate comparison for Ontario Public Service Employees is the private sector in Ontario, because of the province's unique set of economic conditions." Settlements in the first quarter of 1984 in the private sector dropped to 3.9% for all agreements in Ontario. The agreements without COLA were at 5% and across Canada, each category was at 3.9%. According to the C.L.V. report dated August 20, 1984, "Canadian employers

increased the salaries of some 92,000 employees by an average of 5.5%. The 5.5% increase included across the board increases averaging 4% with the remaining 1.5% basis on merit review." It has been noted that the Federal controls for its employees have exceeded, as they have been applied across the board, the private wage settlements and have left those public employees ahead in that year. If the private sector data therefore was to be controlling then on average, the justifiable increase in the public sector would be within the guideline limits set in this Province for at least the first half of 1984. Yet the expectation and indeed the application in the public sector is to apply at least 5% applicable to compensation items.

The Employer argued that the Board, while concerned only with the determination of a wage increase, must consider the cost of other compensation items such as benefits plan, vacations, premium pay, etc, which flow from another collective agreement which is now under review by a Board of Arbitration established in that dispute between the parties. The Employer submitted that the appropriate wage increase for this category would be no greater than the average of current settlements and of course within the average compensation increases from 0 - 5% referred to by the Treasurer of Ontario in regard to the introduction of

Bill 111 and the criteria for the purpose of Section 4 of that Act.

The rate of inflation is an appropriate criteria, as it should apply to maintain at least the employees' present wage levels. That rate presently stands at 4.2%, but for the year our estimate is an average of 4.5%. We note on the Employer's data that the increases to this category have in the last 4 years exceeded the C.P.I. increase but not as to base rates which are just about 1% lower. As noted above, the employees in this category have fallen behind, both in the public and private sector, to roughly the same extent. We find that this data supports an additional increase to that which would cover inflationary costs which would redefine the base rate within the historical context of this category. The Union suggested a further support its increases on the basis of productivity. This has been used as a measurement tool by arbitrators in determining a wage dispute, but for the most part, parties have been unsuccessful in convincing arbitrators of an appropriate basis for measurement of this sometimes nebulous theory of the value of the work of an individual related to the output of the organization involved. Section 12 (2)(d) of the Act provides as one of the factors to be considered,

> "The need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered."

This criteria is broad enough to include, if it is necessary to consider that it can be included, the concept of productivity and it is not excluded as being an exclusive function of the Employer referred to in Section 18, as it is merely a method or tool to be used in consideration of work performed and the employee's responsibility and contribution in that regard. Obviously it is an inexact method and whatever the factors which are put into the data, the result cannot be taken as absolute at arbitration, short of a job evaluation which can establish by emperical studies of the particular jobs involved, the actual demands and limits of a particular classification. Nonetheless the criteria is valid in a general sense, particularly where the statistical data provided as here, can reasonably lead to a conclusion that indeed in a real sense the employees are more productive in handling work which is required to be done. The statistics provided by the Union in this regard were not challenged by the Employer, although it was given further time to make further submissions in that regard following the

hearing, but did not, which leaves us with the unchallenged comparisons for the purposes of considering the work of the employees in this category, showing that a substantially reduced complement is caring for an increased patient load covered by the same classifications. The fact that there were increased numbers in the category prior to 1983 than in 1984, does not by itself mean that there is an increase in productivity as the additional numbers could have been excessive and not required to handle the usual tasks of the employees. Where however admissions and patient numbers have increased to the extent that productivity per member has increased by more than 10% since 1983 because of the reduced numbers of employees who are required to carry on the functions in support of higher patient loads, then in our opinion the Union has established an appropriate base to consider this factor as a rationale for an additional increase to that which would otherwise be appropriate under the other headings. The value of such productivity increase is not directly proportional to the increase per member per year to year as indicated in the tables of data in the Union brief. As we have said, to be accurate to the greatest extent, would require a job evaluation of each classification. What we conclude from the information to this Board is that there is some basis established by the Union, to justify an additional amount of compensation in 1984 for

these particular employees than what might be considered within the guideline figures using the inflation rate and historical values. The value of that particular factor is moot, but we find that it must be weighed in the consideration of the balance of all the factors leading to the increase determined by this Board.

We also find that it is appropriate for this year to maintain the currrent classification differences so that a percentage increase across the Board is required, rather than a monetary figure. In that application there is a movement to reduce the variances between the lower and higher rates as the applicable percentage varies with the classification rate. In that regard, we are of the view that this would not be a desirable affect this year so that the present differences in the rates should be continued for this year.

Having regard therefore to the range of settlements in the public and private sectors for the first half of 1984, the rate of inflation for that period and the forecast for the balance of the year, the historical relationship of this category among others in the public service and the increase of productivity of these employees as demonstrated to this Board, together with consideration of the fiscal policy of this Province

and its ability to pay in that regard and taking into account that there are present benefits applicable to all employees which are of some value in looking at total compensation, the Board concludes that there should be an across the board increase to all classifications in this category effective January 1, 1984 of 6.5% and we so award.

All employees as of January 1, 1984 shall be entitled to be paid the increase herein awarded on all paid hours from that date. Any employees as of that date who have since left the employment for any reason, shall be entitled to pro rata share of the increase from January 1st to the date of their termination. All new employees since that date shall be entitled to the increase from the date of their hire. All such employees shall be notified by the Employer in writing with a copy to the Union, within 15 days from the release of this award to the parties, of their right to claim such retroactive wage increases. Such employees will have 30 days only from the date the notice is mailed to claim the retroactive adjustment. Such notices shall be mailed to the employee's last known address on the records of the Employer.

The Union further submitted that the Board should award interest on the increased wage adjustment

pursuant to this award from January 1st to the date of payment. The Board finds that an award of interest is not appropriate in the circumstances of this case and rejects the Union's submission.

The Board directs that the award shall be implemented within 60 days from its release to the parties. The parties are further directed to forthwith cost this award, for the submission, to The Inflation Restraint Board as required under Bill 111. The Board retains jurisdiction until the agreement is in effect between the parties.

DATE AT TORONTO THIS 24th DAY OF OCTOBER, 1984.

HOWARD D. BROWN, CHAIRMAN

S. LEWIS, UNION NOMINEE

F.T. COLLICT, EMPLOYER NOMINEE

ADDENDUM FROM STEPHEN LEWIS

My own calculations would have fashioned an increase of 7.5% for this category, but the difference between that figure and what the chairman has awarded certainly doesn't justify a dissent.

In fact, there are particular aspects to the reasoning of this award which seem to me to invest it with logic, breadth, and importance. What the chairman has done, if I understand him rightly, is to take a look at all of the component factors and assign to them, collectively, a weight which ultimately determines the final percentage figure.

This kind of approach is far more persuasive than the scientific exactitude to which some arbitrators pretend or, for that matter, more persuasive than the so-called "replication" of "free collective bargaining" - a concept which is useful but speculative when we're dealing with groups of workers from whom the right to strike has been removed.

In the instant case, the chairman has taken all conceivable factors into account: Bill 111; the rate of inflation; private sector determinations; the experience in 1983; the relationship to other

categories; and the evidence of productivity. His decision that the wage increase should exceed the guideline is entirely defensible and attests again to what has now clearly become the majority opinion among arbitrators: Bill 111 is not the over-riding consideration or - to put it another way - when a case for an increase beyond 5% can be made, that case should be honoured.

I have but one further personal observation. The Institutional Care category deserves far greater respect and kudos than it receives. These are public servants who labour long and hard in ennobling occupations, and yet their work is undervalued. I hesitate to be invidious, but it strikes me as absurd that the employees in the Institutional Care category should rank fourth from the bottom out of nine categories on the basis of average annual income.

For the most part, these employees work with severely disadvantaged or handicapped human beings, and in a civilized society the value of such work should have primacy - both as to its social utility and its economic worth.

At some point in the near future, the Institutional Care category deserves a quantum leap in wages.

- 30 -

October 19, 1984.

DISSENT

Re: Crown in Right of Ontario
and O.P.S.E.U.
Institutional Care Services Category

This Member is in agreement with the majority award, with the exception that there is no justification for consideration of an increased settlement based upon the allegation by the Union of a productivity increase.

The majority award at page 15 states that the Union has justified ".... some basis ...." for an additional amount of compensation in 1984 for the Institutional Care employees. However, it concludes that

> "The value of that particular factor (productivity increase) is moot ....."

Regardless of this conclusion, the majority position is that the alleged productivity increase must be considered in the recommended settlement.

It is the position of this Member that the alleged productivity increases should not be included in any consideration of salary increases for employees covered by the Institutional Care Category, for the following reasons:

1. DUPLICATION

   (a) Many companies in Ontario have increased their levels of productivity throughout 1983 and 1984 by increasing production and/or work performed with the same number or fewer employees.

   (b) Wage levels have been negotiated and set within these various organizations.

   (c) The wage levels have been included in the statistical base used to establish the general trend of wages and settlements reached throughout the

various business, industry and public service sectors.

(d) The Union, on behalf of the Institutional Care Category has agreed that any settlement reached in the subject case should reflect the general trend of settlements in the private sector in Ontario. (See page 11 of the subject award)

(e) The addition to the trend of settlements reached in the private sector of an increase based upon alleged productivity increases of the Institutional Care Category, is a duplication of rewards for productivity increases which, already, have been incorporated in the general trend of settlements in the private sector in Ontario.

(f) To conclude otherwise is to make the judgement that the only group throughout the whole economy in Ontario which effected a productivity increase in 1983 and 1984, was the Institutional Care Category of the Ontario Public Service. Such a conclusion is unwarranted.

(g) The majority award result, therefore, amounts to

(i) a consideration for productivity increases which most certainly would be incorporated into the general trend of settlements in the private sector in Ontario, (for these organizations considered in the general trend of settlements did not "stand still" throughout 1983 and 1984); and

(ii) an additional or further consideration for the alleged productivity increase of the Institutional Care Category as set out in this award.

The net result is duplication.

2. WHAT CONSTITUTES A "PRODUCTIVITY INCREASE"?

The Union argued in this case that a productivity increase had been effected by the Institutional Care Category because over the past several years, the numbers of Institutional staff had decreased while the numbers of client/patients had increased.

Does such a contention constitute a productivity increase?

If the Maintenance Services Category must maintain and operate more buildings but it has fewer staff to do it, would this constitute a productivity increase? Essentially in order to meet its constrained budget, perhaps less painting, renovation and repair work would be performed; but this certainly does not constitute an increase in productivity.

Similarly in the Institutional Care Category, the situation described by the Union which involves reduced staff with an increased patient/client load need not represent an increase in productivity. Programs might have to be changed such as the reduction of field trips from two per week to one per week for mentally retarded patients; but this does not represent an increase in productivity. The work activity of Institutional Care employees may have been subjected to reassignment; but if the counsellor or case worker works no more than his/her regularly scheduled work day, there surely has been no increase in productivity.

Moreover, if floors are washed and waxed once each week as opposed to twice each week, with a resulting decrease in the cleaning work force by 10 to 20%, and given the fact that there may have been an increase in floor area to clean, has there been an increase in productivity? Certainly there

has been a reduction of activity owing to the reduction in staff; but where has there been an increase in productivity?

If there has been an unacceptable increase in work load of employees, it is conceivable that more work or services may be completed in the same or a shorter period of time; and that, in fact, a productivity increase has taken place. However, this is an issue associated with possibly unacceptable work loads with recourse available through the Grievance Procedure in the Collective Agreement. It is not a matter of real increases in productivity.

In total, it is the position of this Member that a reassignment of work amongst employees through discontinuing activities which were once done, but now cannot be done owing to reduced staff levels or increased patient/client levels, does not constitute an increase in productivity.

3. NO EVIDENCE

During the proceedings before this Board, the Union did not advance any evidence to support its allegation that there had been, in fact, an increase in productivity in the Institutional Care Category.

Perhaps an oversimplified definition of a productivity increase is - "to produce or to perform at the same or at an increased level in less time with less effort, resources or expense". As against this simple definition, what evidence was advanced by the Union?

The Union's contention of an alleged productivity increase was based upon data which indicated a reduction of the work force in the Institutional Care Category over several years while the patient work load increased. However, this information did not demonstrate a productivity increase. That is, the Union did not demonstrate that,

(a) the same quality and quantity of specifically designated activities were performed in less time in 1984 while the work load increased; or

(b) technological changes had, in some way, reduced work loads for Institutional Care staff; or

(c) changes had occurred which would reduce expenses through the introduction of a lower cost product to perform the same work; or

(d) procedures had been introduced which had increased efficiency and thereby reduced expense and effort; or

(e) work had been reassigned to enable staff to deal with increased patient loads; etc.

At no time did the Union provide evidence to this Board that - "there had been more for less" - that is, that there had been, in fact, a productivity increase by the Category. The Board, therefore, is precluded from assuming that increases in productivity had occurred.

The Board might conclude "or guess" that a number of activities would have to be discontinued or modified in order to deal with an increased patient work load in the Category; but in the absence of any supporting evidence whatsoever, surely the Board cannot guess that productivity increases have taken place and that they should be considered in the evaluation of a final wage settlement.

4. DOES THE BOARD HAVE JURISDICTION TO CONSIDER ALLEGED PRODUCTIVITY INCREASES TO SUPPORT A CONCLUSION IN FAVOUR OF INCREASED WAGES?

The majority position of the Board at pages 13 and 14 states that Section 12(2)(d) of the Act provides, as one

factor to be considered,

> "The need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered."

The majority position considers this as,

> "..... criteria ..... broad enough to include, ..., the concept of productivity ....."
>
> (page 14)

The majority position states further that the above mentioned criteria are not excluded as an exclusive function of the employer as set out in Section 18(1) of the Crown Employees Collective Bargaining Act.

This Member does not concur with this position. There is no reference to productivity in Section 12(2)(d) of the Act. The provision clearly makes reference to the concept of job evaluation and the value of a job. Even the majority award at page 13 states that

> "..... for the most part, parties have been unsuccessful in convincing arbitrators of an appropriate basis for measurement of this sometimes nebulous theory of the value of the work of an individual related to the output of the organization involved."

And yet, the majority award would give support to the Union's position in the face of this language associated with job evaluation, the Board's own comment with reference to the elusive problem of measuring the value of work, and the absence of any specific evidence concerning productivity increases.

In the alternative, however, if one can take licence with Section 12(2)(d) of the Act to include a consideration of productivity, one also can take licence with reference to

Section 18(1) of the C.E.C.B. Act. That is, Section 18(1) of the Act provides that the Board has no jurisdiction with reference to the exclusive function of the employer to manage and determine,

> "..... complement, organization, assignment, ... work methods and procedures, kinds and locations of equipment ....."

Clearly the Board has no jurisdiction to impact Management's actions on any of these matters. However, does the Board have the right to decide that productivity increases, which alone result from Management's actions in effecting changes in complement, organization, methods, procedures and equipment, etc., shall accrue to the Institutional Care Category? This is the effect of the majority position in this award.

If consideration for productivity increases can be read into Section 12(2)(d) of the Act, (see p. 14 of the award), lack of jurisdiction of the Board to allocate productivity increases generated through Management action can be read into Section 18(1) of the C.E.C.B. Act.

. . . . . .

In conclusion, therefore, there is no rationale to support an additional wage increase based upon the Union's allegation of productivity increases. Such a decision involves duplication of consideration for the concept of productivity, once in the private sector as part of the general trend of settlements in Ontario, and once again when to this is added the alleged productivity increases of the Institutional Care Category; no evidence was presented to the Board to demonstrate that productivity increases had, in fact, occurred; a decrease in the Institutional Care work force and a concomitant increase in patient/client work

load does not, of itself, indicate an increase in productivity; and finally, a reading of Section 18(1) of the Act is broad enough to include that the Board does not have the jurisdiction to allocate the alleged productivity increases which, alone, result from Management's actions in adjusting the work complement, organization, methods, procedures, types of equipment, and work assignment, etc., of the Category.

It is the position of this Member that the alleged productivity increase claimed by the Union in the subject case does not warrant consideration for a further increase in addition to a proposed wage increase which would mirror the general trend of settlements in the private sector in the Ontario economy.

J. P. Collicutt

October 22, 1984.

T/0024/84 -

IN THE MATTER OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

AND IN THE MATTER OF AN ARBITRATION

BETWEEN	THE ONTARIO PUBLIC SERVICE EMPLOYEES' UNION (The Union)
AND	THE CROWN IN THE RIGHT OF ONTARIO (The Employer)

AND IN THE MATTER OF THE OFFICE SERVICES WAGE BARGAINING CATEGORY

BOARD OF ARBITRATION	H.D. BROWN, CHAIRMAN L. ROBBINS UNION NOMINEE E.R. O'KELLY, EMPLOYER NOMINEE
APPEARANCES FOR THE UNION	G. RICHARDS L. ROBINSON S. USHER MS. H. MURRAY MS. E. THOMSEN MS. P. HENRY MS. G. BROWN MS. I. MURRAY MS. S. MARTIN MS. G. DOUGLAS
APPEARANCES FOR THE EMPLOYER	W.J. GORCHINSKY E.M. MOOLGACKAR M. ROBINSON C. TRUMAN M. GOLDHAR A. PAYNE

A HEARING IN THIS MATTER WAS HELD AT TORONTO ON SEPTEMBER 11, 1984.

AWARD

The Board was established pursuant to the Act to determine the dispute between the parties with regard to concluding a collective agreement concerning the salary levels covering the employees in the office service category, which is one of nine categories separately dealt with for this purpose by the parties. Notice to bargain for this category, under the agreement which expired on December 31, 1983, was given on September 28th, 1983. Following that, the parties met in direct negotiations but were unable to resolve the differences for the purposes of the collective agreement and subsequently an application for arbitration pursuant to Section 18 (1) of the Act was made which led to the arbitration hearing and this award. It is agreed by the parties that the Board is properly constituted and has jurisdiction.

It is agreed by the parties that the term of the agreement which is covered by this award, shall be as and from January 1, 1984 to and including December 31, 1984.

The bargaining unit consists of some 5,970 employees in 54 classifications, including data

processing, typists, secretaries, stenographers through to court reporters. The salaries in this category are at a minimum of $251.51 per week which is the starting rate of a clerical typist 1 to a maximum of $647.71 per week for a supreme court reporter 1. The weighted classifications are in the clerical typist and secretarial jobs ranging from $281.82 to $381.03 per week, with an average weekly earning for the category as a whole, as at the end of the collective agreement, of $354.86. This category on the average at the lowest range of the nine separate categories of public employees in the bargaining units.

The Union's position for employees in this category is that a substantial wage increase is justified. It must be noted that the dispute in this case is limited to salaries and this Board is not dealing in any way with benefits and working conditions which are the subject of another arbitration between the parties. The Union's demand is an across the board increase of $50.00 per week for all employees which would amount to 14.1% increase in 1984 on the average earnings. In addition, it is its demand that there be one more increment added to the salary scale for long service employees who have completed 10 or more years of service which would involve an increase of 3% for such employees. Further, the Union requests that the G-1

note should be extended to all employees in the category. This note to the salary schedule is that, "typists who are required to spend at least 50% of their time operating dictating and or word processing equipment (ie: a typewriter which has memory storage and recall capabilities) shall be paid one rate above each listed rate in the salary range." The Union further submitted that there should be full retroactivity to January 1, 1984 for all those who were or are in the category, plus interest at the prime bank rate, to be paid within 20 days of the date of the release of the award. The Employer's position throughout the parties' negotiations and at this hearing, was that any result had to be contained within the provincial guideline of 0 - 5% in accordance with the Public Sector Prices and Compensation Review Act (Bill 111) which obviously was a critical factor in the negotiations between these parties on this category, as well as all of the others so involved. It was the Employer's position that there should be a general wage increase of 4% for all employees in the category effective from January 1st, 1984, with full retroactivity, but without interest.

The Board denies the Union's request for another increment to be added for long service employees. The Board finds that for the year of 1984 the emphasis should be to the extent substantiated for

the category of employees, on the actual wage increases for the employees in the category in general and should not be weighted in the atmosphere of wage restraint to which we refer below in favour of one segment of the employees involved and thereby to distort the present wage schedule and relationship between the classifications.

In a similar context, the Board rejects the Union's submission that the G-I note referred to above, should be applied to all employees in the category. In our view, not only is that type of increase not justified for the period of this collective agreement on the basis of the restraints in effect, but also that is an area which should be demonstrated if at all, through a job evaluation which we are advised by the Employer's brief, is taking place. It is from that position, once completed, that an objective assessment of the skills involved may be made and while there may be a basis to extend that benefit to all employees in that category, this Board is not in a position on the material before us, to make that determination, nor should it, in our opinion, make such determination without an appropriate evaluation of the value involved in the various classifications in that context.

The most critical issue in this, as well as

the other negotiations for these categories, is the determination of the increase to the salary schedules of the employees in a particular category, the determination of which has been made more difficult for the parties as well as arbitrators, having regard to Bill 111 and previous mandatory wage controls, as well as the general economic conditions facing employees in both the public and private sector. The parties have provided the Board with extensive briefs on their positions on this issue which the Board has considered at the hearing and at its executive sessions following the hearing in the disposition of the issue.

The Chairman has now dealt with his position with regard to the effect of Bill 111 in the award concerning the Institutional Care Category (award dated October 1984) which opinion remains insofar as the Chairman is concered, applicable to the present dispute. For the purposes of the parties, it is not necessary to reproduce all of that opinion, but for the purposes of this award, certain parts can be repeated in order to set out the criteria which has been considered in this case. The Board is required by legislation to consider, "the Employer's ability to pay in the light of existing fiscal policy". At page 6 of the above mentioned award it was stated,

"The concept of consideration of an Employer's ability to pay increased wages is not new and can be in some circumstances significant, but generally arbitrator's have given little weight to that as a controlling criteria." To consider "as referred in in that factor means to give some careful thought in the context of the dispute in which that term is used. Under Bill 111 the direction is that the ability to pay must be considered in the light of the provincial fiscal policy which takes the meaning beyond just a failure of the Employer to want to pay any increases which may be imposed, into the practical area of consideration of the economic factors which confront the Employer and therefore its employees which can reasonably be taken into account by an arbitrator. Without detailing all of the public statements of the Treasurer of Ontario, referred to in the briefs of the parties and to the various opinions expressed to the press and by the parties themselves at the hearing concerning what the fiscal policy encompasses and may mean, in general terms we find that the provincial government through this Bill gave notice that 1984 would continue to be a year of wage restraints as the result of its forecasts concerning unemployment, economic activity and real growth in the Province and that while free collective bargaining was not to be limited as it had been under the Inflation Restraint Act, parties to a collective agreement and arbitrators who are invested with the authority to set terms of the collective

agreement, must pay attention to that specific concern expressed by the Treasurer in his budget statement and as carried forth in the reporting function of the parties and the arbitrator to the Inflation Restraint Board. We are not bound to apply the provincial fiscal policy as a mandatory requirement but we are required by this legislation to keep that direction in mind when determining compensation. The Board therefore is not required by the legislation to apply a singular criteria of ability to pay and is not constrained to impose guidelines as if they were mandatory controls as in the Inflation Restraint Act. Where therefore the Board is satisfied on the submissions made to it by the parties and on all of the relevant factors that such a Board in determining an interest dispute would normally take into account, that a wage increase is justified, it can set the amount of the increase as it determines which may either be within or exceed the provincial guidelines and it will be binding on the Employer...as the Treasurer stated in effect, if ordered to do so the Government will comply. What is necessary under the Act is that the arbitrator give consideration to that fiscal policy in determining the appropriate increase. But for budgetary and control reasons, the Province has attempted to control wage increases in the public sector to decrease or retard the pressure to catch what was deemed to be lost during the mandatory control period to those limits. It is also clear that during the year, a 5% increase has become a base and not the end of a

range for salary increases in
the public sector..."

In that award, the Board dealt with the three other arbitration awards which had been issued as at that time with regard to the above conclusion which the Chairman reached after considering the submissions of the parties and those award by which it should be clear that the Board accepted the conclusions reached by arbitrator Kates in dealing with the correctional services category (award dated August 31, 1984). It is the Chairman's view that a Board is not bound to apply the strictures implied in the provincial guidelines, but that is one of the factors and important criteria which the Board must now take into account in determining such a dispute. In the light of the economic reality of 1984, there must be established by the Union a persuasive need to exceed such restraints in the public sector for this particular group of employees who fall within that sector. This consideration must be given weight along with the other criteria which would normally be applied by an arbitrator with reference to Section 12 (1) of the Act. However it is clear that the intent of the legislation enacted for the purpose of application in a year of wage restraint in this Province that the criteria under the Act may not be of the same weight as in circumstances where restraint legislation

is not in effect. It is this Board's function to attempt to balance all of those factors and the interests of the Employer as it has been expressed by legislation and of its employees, not in the form of a compulsory or overriding factor, but as stated, in a form of an intent to provide guidelines within which the Province has sought to promote as part of its fiscal policy in this year. There can be no question that the mandatory controls and the restraint legislation, both provincially and federally have had a serious effect on the wage rates in this Province and across the country. The statistics provided by the parties in that regard indicate that the wage settlements in Ontario in the second quarter of 1984, were 3.6% in agreements covering 500 or more employees and in Canada at 2.9% for the same quarter on the average. These figures would not be necessarily a direct result of wage restraint legislation, but have been affected by the general economic unease, high unemployment and relatively stagnant business growth in the last few years, which has been manifested in such wage adjustments in 1984. One of the basis propounded for comparison of salary rates and one of the aims of arbitrators in interest disputes is to approximate, as reasonably as possible, the outcome which would be reached by the parties through free collective bargaining. Recognizing that there is a difference between public and private sector

bargaining, if the private sector is to be the most meaningful benchmark, clearly for whatever category of employee in the public sector is concerned, the increase is at least, at the time of this writing, would be within the guideline criteria expressed by the Treasurer of this Province. That however is but one part of the criteria which this Board must consider in resolving this dispute.

The Board recognizes that these employees among other in the provincial government, do have employment benefits which have a cost factor. That part of the dispute is not before this Board as we have mentioned and which flows from a separate collective agreement, but we acknowledge that there is a present value of benefits to some degree which can be considered in the evaluation of the total applicable increase. A second criteria which must be taken into account in such disputes is the rate of inflation. This rate has decreased from the previous year to 4.6% in the second quarter of 1984 and recent statistics indicate a further reduction to 4% or below. It is probable however that such figures for the year will be between 4 and 4.5% overall.

The Union based its claim for a substantial wage increase referred to above on the basis of the cost

of living to which we have referred to, the roll-back at the rate in an agreement reached between the parties covering the years 1982 and 1983 under which an average increase of 11.2% in this category was given in the second year. Under the mandatory controls of Bill 179 the roll-back amounted to an average of 6% of the salary in effect on July 1, 1982. The Union submits that this deficiency as it had been agreed to voluntarily between the parties should now be restored. A further submission in this area was on the basis of inequality in earnings between women and men in the public service. A fourth heading of the Union's submission was based on a factor of productivity for this group of employees. In that regard it was submitted that the numbers of employees in the office service's category has been reduced from 7,363 in December 1979 to 5,970 in December 1983 which is not in its submission, due to a reduction in the flow of data which these people deal with and therefore reflects an increase of productivity.

The Employer's position was that the Board must take into account the state of the economy in this Province which involves the consideration of the restraint program by which a guideline range of 0 - 5% was initiated by the government, not as a matter of covering inflation but as a "fair, reasonable and responsible, given current economic conditions and the

need for continued restraint", as stated by the Treasurer. It was submitted that a compensation increase in excess of these guidelines would require either an offsetting increase in provincial tax rates, an increase in the provincial deficit or a reduction in other areas of government expenditure. In that regard it was submitted that 5% is the upper limit for compensation increase and on the basis of private sector comparisons in the light of prevailing economic conditions, the proposal of the Employer of 4% would be appropriate, even if restraint legislation had not been in force. The Employer submitted that extraordinary reasons must exist before the upper limit of the guideline be exceeded and in this category it submitted that no such reasons existed and that the general settlement rates in the private sector should be applied to this category and must consider that in addition to the increase in the base rate, there is a cost of present employee benefits as part of the total compensation considerations.

In the award dealing with the Institutional Care Category, the comments at pages 9 and 10 thereof are equally applicable in the Chairman's view to this dispute and are as follows;

> "We have found that the Board is not prohibited from

> exceeding the guidelines, but in view of that restraint policy and having regard to the wage settlement data in the Province, there must be established a compelling need for special consideration of this group of employees to justify an award in excess of the guidelines. These are not the overriding factors as suggested in the Barton award, but must be taken into account in the balancing of the interests of the Employer and this category of employees in the provincial sector. We feel it is important to recognize the areas in which these employees should be assessed, but it is also important to understand that in a year of restraint covered by provincial guidelines, those headings cannot be given the same weight in the assessment of salary and compensation as they might be in other economic circumstances..."

As in that dispute, the Board here has attempted to balance these interests, having regard to all of the submissions made to us by the parties as referred to above. Specifically we must reject the notion that this group of employees has a right to catch-up what notionally they lost as a result of the roll-back of their previous agreement with the Employer under the mandatory control legislation, where there is a continuation of a restraint program. Even though the guideline is not mandatory, as we have said, the legislative intent is clear that it must be taken into

consideration and in so doing, such presumed losses cannot be given weight for this agreement. In other circumstances, voluntary agreements reached by the parties can be given maximum weight in wage level assessments, but the same consideration we feel cannot be applied at this time. In view of the general objectives in interest arbitration to obtain what would reasonably be the result of free collective bargaining, comparisons of both public and private sector wage levels are valid and if a catch-up amount as suggested by the Union was added to even the maintenance of the cost of living, the increase in this category would greatly exceed the norm in this year in either factor. In our view such would not be a reasonably obtainable result in free collective bargaining.

The Union suggests that a factor of productivity be applied. While this is a valid factor to be used as a measurement tool in determining wage levels and which is appropriate to be considered under Secton 12 (2)(d) of the Act, there must be objective data whereby real and not assumed productivity can be found by a third party inquiring into the dispute. It is generally difficult to substantiate an increase in productivity of a group of employees, although it can be done and it is not a valid factor where the equation is based simply on a reduction of the numbers of employees

and an assumption of the same or increased workload. The matters referred to in the Union's brief under this heading would in our opinion properly be considered in a job evaluation which we are told is proceeding in this category and the information does not persuade us that weight can be given to this dispute under this heading for this category of employees. In the same context, it is our opinion that the reference and indication of inequality of earnings between men and women in the public sector is beyond this Board's determination in this dispute, that submission may well be part of an evaluation of these jobs in relation to others in the public service however it is not sufficient for our purposes to make a claim in that respect based on averages which may indeed by themselves be correct, without an objective study of comparative information, no arbitration board could make an informed judgement of the effect of such a factor on the wage scales of a certain group of employees who form about 11% of the total service-wide bargaining unit without such in depth statistics and job data.

In our assessment of the applicable factors in this wage dispute, we have given effect to and have considered the general economic conditions in the Province, the provisions of Bill 111 and the provincial guidelines expressed in terms of the fiscal policy of

the Province, the working conditions of these employees, the range of settlements in the public and private sector for the first half of 1984 and the difference in the average weekly rate in this category with the increases in both public and private sectors. It is our assessment of all of these headings that there is not a compelling reason in this dispute to exceed the maximum limit of the guideline. In addition it is our view that irrespective of the restraint legislation, these factors indicate to us that an appropriate base wage increase for employees in this category would reasonably be determined at that level. The present cost factor contributable to employee benefits would, on a total compensation benefit, exceed the base rate and would bring that within range of the private sector increases in Ontario and to a large extent, equate with the data with regard to public sector settlements in this Province of which we have been made aware.

The Board finds that it is appropriate for this category to increase the base wage rate in terms of percentage rather than a dollar figure to maintain current classification differences in the light of the job evaluation program which is in existence.

Having regard to all of the factors referred to above and for the foregoing reasons, the Board awards

that an across-the-board increase of 5% shall be made to all classifications in this category effective January 1, 1984. All employees as of January 1, 1984 shall be paid the increase herein awarded on all paid hours from that date. Any employees as of that date who have since left the employment for any reason, shall be entitled to a pro rata share of the increase from January 1st to the date of their termination. All new employees since that date shall be entitled to the increase from the date of their hire. All former employees shall be notified by the Employer in writing with a copy to the Union within 15 days from the release of this award to the parties, their right to claim such retroactive wage increases. Such employee will have 30 days only from the date the notice is mailed to claim the retroactive adjustments. Such notices shall be mailed to the employee's last known address on the records of the Employer.

The Union further submitted that the Board should award interest on the increased wage adjustment pursuant to this award from January 1st to the date of payment. The Board finds that an award of interest is not appropriate in the circumstances of this case and rejects the Union's submission.

The Board directs that the award shall be implemented within 60 days from its release to the

parties. The parties are further directed to forthwith cost this award for the submission to the Inflation Restraint Board as required under Bill 111. The Board retains jurisdiction until the agreement is in effect between the parties.

DATED AT TORONTO THIS 19th DAY OF DECEMBER, 1984

HOWARD D. BROWN, CHAIRMAN

L. ROBBINS, UNION NOMINEE

E.R. O'KELLY, EMPLOYER NOMINEE

IN THE MATTER OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

AND IN THE MATTER OF AN ARBITRATION

BETWEEN: THE CROWN IN RIGHT OF ONTARIO

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

AND IN THE MATTER OF THE OFFICE SERVICES WAGE BARGAINING CATEGORY

D I S S E N T

I have reviewed the award of the Chairman in the above matter, and regret that I must dissent from it. The major issue in this award is the decision to award this group of employees an increase of 5% across-the-board.

The Chairman has accepted the views in the Knopf and Kates awards that boards of arbitration are not mathematically bound by the provincial guidelines of Bill 111, but must balance the concept of ability to pay with all other interests and criteria in fashioning an appropriate wage increase. The Board also rejected Professor Barton's approach that "ability to pay is the over-riding criterion".

Given that background, I find it questionable that the Union's argument of a catch-up based on the 1982 voluntary settlement should be completely rejected. More specifically, collective bargaining for this category in the fall of 1981 resulted in a two year agreement covering the years 1982 and 1983. That agreement,

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concluded in 1982, provided for an increase in all rates of 9% as of January 1, 1983, and for a further increase on July 1, bringing the total increase for 1983 to an average of 11.2%. Presumably, both parties recognized that this group, the lowest paid group in the Ontario Public Service, required a substantial increase. The Government then abrogated the settlement in the fall of 1982, by Bill 179, thereby rolling the wage increase back to 5%. The Chairman has noted that in other circumstances, such a voluntary agreement reached by the parties should be given maximum weight in wage level assessments. To take such a criterion, and "demote" it from maximum consideration to no consideration seems to me to go too far. It would be more understandable if the Chairman had tempered the criterion of the 1982 settlement so that it not be given total effect, but still had applied a substantial increase to restore the position of these employees. However, to give this important factor no weight at all does not seem to me to be properly balancing all of the criteria in this dispute, but does seem to be giving "ability to pay" over-riding importance - that is, a factor that has the power to oust other factors totally and make them inapplicable.

I am also particularly disturbed with the resulting comparison of this unit to that of four other categories in the Ontario Public Service. To get a true picture, we must look not just at the percentage increases, but also at the resulting weekly dollar increases. For ease of reference, I have set out some comparisons in the following table:

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Category	Average Weekly Earnings in 1983	Percentage Increase for 1984	Resulting Average Weekly Increase in Dollar Amounts
Correctional Services	$476.12	7.5%	$35.71
Institutional Care	388.63	6.5%	25.26
Clerical Services	371.46	6.5% [To be implemented as across-the-board dollar amount.]	24.14
General Operations	355.53	5.0% or 50¢/hr. [whichever is greater]	20.00 minimum [for most employees in this category]
Office Services	354.86	5.0%	17.74

In my view, the above five awards taken together place this group in a most intolerable position. One of the factors which this Chairman considered in the Institutional Care award was the "historical relationship of this category among others in the Public Service". Given that factor, it is inappropriate to give the Office Services category, the lowest paid group, the worst treatment, and cause their relative position to other groups in the Ontario Public Service to deteriorate and widen even further.

The relationship between the Office Services category and the Clerical Services category is particularly relevant given the close relationship between the jobs in these categories. It is notable that Professor Palmer in his award dated December 13, 1984 was clearly impressed with the question of the general low wages paid to this category, peopled as it is largely by females. He felt that the gap

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hould be lessened, and that it could not be put off indefinitely. n that basis an increase of 6.5% was awarded. Moreover, he accepted he Union's proposal to have it paid as a flat dollar per week increase, ut left it to the parties to convert it to an appropriate average.

Along these lines, it is noteworthy that the Union in this case proposed a dollar per week across-the-board increase instead of a percentage increase. They clearly preferred to see any increase structured so as to give more weight to the interests of the employees at the lower end of the wage spectrum. It is hard to see why this approach has been rejected in this award. The Union is the bargaining agent of these employees, and their views on how a given compensation package should be apportioned should be given maximum weight. The Employer presented no valid counter argument on this point.

Finally, it is noteworthy that productivity was accepted as a factor in the Institutional Care case, and rejected in the case at hand. In both cases, data was available to show that the work force has declined over the years. I recognize that in the Institutional Care case, data on admissions and patient numbers in institutions was provided. In the Office Services case, the Union submitted that there has been no reduction in the flow of data with which these people deal. Obviously, there is no easily identifiable factor which the Union could apply in such a case, which is comparable

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to "patient admissions". There is a much greater difficulty in generating statistics to measure data load in this kind of sector. However, on balance I still feel that one can assume comparable increases in productivity for both groups.

In conclusion, this award has created a most unpalatable result for these employees. By awarding the lowest paid group not only a lower dollar increase but also a lower percentage increase than the other categories mentioned above, the internal relationships have been distorted in an inappropriate way. Finally, the award has given too short shrift to the previous voluntary settlement mentioned above. The matter does not end here however. As indicated before, the Board recognized that it might have been given maximum consideration in the absence of Bill 111. Obviously, it will be left to this group of employees to attempt to recover the substantial losses in the next round of negotiations.

Respectfully submitted

Larry Robbins
Union Nominee

Dated this 7th day of December, 1984

at Toronto, Ontario

T/0024/84-2

T/24/84

IN THE MATTER OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

AND IN THE MATTER OF AN ARBITRATION

BETWEEN THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION (The Union)

AND THE CROWN IN THE RIGHT OF ONTARIO (The Employer)

RECEIVED
JUL 11 1989
CROWN EMPLOYEES GRIEVANCE SETTLEMENT BOARD

AND IN THE MATTER OF THE OFFICE SERVICES WAGE BARGAINING CATEGORY

BOARD OF ARBITRATION H.D. BROWN, CHAIRMAN
L. ROBBINS, UNION NOMINEE
P.D. CAMP, EMPLOYER NOMINEE

SUPPLEMENTARY AWARD

The Board (differently constituted) issued an award dated December 15, 1984 in this dispute. Following its issue, the Employer's nominee, Mr. E.R. O'Kelly who had concurred with the award, died. By letter dated February 4, 1985 the Union requested the Board to deal with two issues remaining in dispute between the parties on implementation of the award and clarification of the application of the wage increases. As the Board was not then complete, the Employer was requested to appoint its replacement to the Board. By letter dated May 27, 1985, the Registrar of the Public Service Labour Relations Tribunal was advised that the Employer had appointed Mr. Camp as its nominee to act in place of the late Mr. O'Kelly. Subsequently the Board as presently constituted, met in an executive session in Toronto on August 29th, 1985 to consider the issues in dispute and the completion of its functions pursuant to Section 13 (2) of the Act.

The Board had received for its consideration the submissions of the Union set out in February, which included the Employer's draft language for the collective agreement. As well, there is further correspondence and an award dated July 31, 1985 of the Board chaired by Professor Palmer in the clerical services category in which similar issues were dealt with. The first issue is a matter of implementation of

the Board's award. The Union seeks to have a clear statement in the collective agreement that the wage increases are to be paid within 60 days. The Employer's draft in this regard is to the effect that it will make "every reasonable effort to implement the salary increases as expeditiously as possible." The Board's award was that it directed that the award "shall be implemented within 60 days from its release." The apparent issue, apart from the language, is whether this should form part of the collective agreement.

In the normal course of negotiations between parties, the actual procedure of implementation of wage increases may generally be part of a memorandum of settlement but not contained in the collective agreement. Where there is however an arbitrated settlement of an interest dispute in which there is a specific direction to the parties as to its implementation, there is substantial support for the Union's position in this case to include that direction in the form of a contractual clause. This is particularly important where any dispute has arisen between the parties concerning implementation of settlements and the issue has been raised at arbitration. In the Palmer award, the Board addressed the issue along with an award concerning interest which does not arise here. The result of that award supports

the Union's contention in this case that the collective agreement should contain a clause for implementation. Indeed, the Employer has not disputed in this case that such a clause should be inserted but has proposed language different from that of the Union.

We find that the language proposed by the Employer is not in conformity with the Board's award. We further find that an implementation clause should be included in the collective agreement. It is our award therefore that the following clause shall be included in the collective agreement to be entered into by the parties;

> "The Employer shall implement the salary increases retroactively within 60 calendar days of the date of the release of the arbitration award to the parties."

The second issue to be determined by the Board is the base rate to be used for the purpose of calculation of the increases as awarded. The Union seeks to have a clarification that the increases are to be added to the legally correct salaries which existed in the prior collective agreement. The Employer's proposed language could lead to an increase based on an incorrect classification rate which has been applied by error or otherwise. The Union submitted that there have

been "hundreds of grievances on this matter currently outstanding and several years have passed since the parties began the first grievances in this regard." That statement was not rebutted by the Employer which indicates that it would take the rates which prevailed in the prior collective agreement. The Union submits that where those rates have been changed through arbitration or as a result of a correction of an error, it is the amended rate which should prevail and on which the increase should apply. We agree with the conclusion reached on this issue in the Palmer award and therefore award the identical language to cover this issue which shall be included in the collective agreement to be entered into by the parties:

> "The salary rates resulting from the application of the increase set out in 2 (a) are listed in Appendix A of this agreement. It is understood that any mathematical errors which may have occurred in computing these final rates will be corrected once found. Further, if by result of arbitration, the salary rates payable on December 31, 1983 are altered, an appropriate alteration in the rate here set will be made."

The Board awards that the language set out in the Union's draft of the collective agreement submitted to the Board, subject to the above amendments, shall be the collective agreement of the parties. We take this action pursuant to Section 13 (2) of the Act.

DATED AT OAKVILLE THIS 16 DAY OF SEPTEMBER, 1985

H.D. BROWN, CHAIRMAN

L. ROBBINS, UNION NOMINEE

P.D. CAMP, EMPLOYER NOMINEE

Re: T/24/84 The Crown in the Right of Ontario and Ontario Public Service Employees Union Office Services Wage Bargaining Category

D I S S E N T (Supplementary Award)

I have reviewed the award of the Chairman in this matter and conclude that I must dissent from it.

The issue in this award is the inclusion of two implementation conditions in the Collective Agreement:

1. **"The Employer shall implement the salary increases retroactively within 60 calendar days of the date of the release of the arbitration award to the parties."**

2. **"The salary rates resulting from the application of the increase set out in 2 (a) are listed in Appendix A of this agreement. It is understood that any mathematical errors which may have occurred in computing these final rates will be corrected once found. Further, if by result of arbitration, the salary rates payable on December 31, 1983 are altered, an appropriate alteration in the rate here set will be made."**

Regarding (1) above; this language is entirely inappropriate and unnecessary in this (or any collective agreement). In actual fact the cheques were issued to the employees covered by this Collective Agreement 21, February 1985.

Regarding (2) above; to the best of my knowledge there was no evidence presented by the Union to support in any way the need for such language.

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In conclusion, this Board member takes the view that such Collective Agreement language is unnecessary and further serves only to undermine the relationship between the parties by supporting the lack of trust apparent in the Union's position.

P.D. CAMP

T/20/84 T/26/84

IN THE MATTER OF A DISPUTE UNDER THE CROWN EMPLOYEES BARGAINING ACT, R.S.O. 1980, c.108:

BETWEEN:

-THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION-
(hereinafter called the "Union")

-and-

-THE CROWN IN RIGHT OF ONTARIO-
(hereinafter called the "Employer")

(CLERICAL SERVICES CATEGORY)

BOARD OF ARBITRATION: E.E.PALMER, Q.C.
P.CAMP
F. TAYLOR

APPEARANCES: FOR THE UNION: J.LICASTRO and others
FOR THE EMPLOYER: W.GORCHINSKY and others

-AWARD-

The present arbitration arises out of an interest dispute between the Employer and the Union regarding terms and conditions which should apply to employees of the former falling within the Clerical Services Category. The

issues which come before this Board of Arbitration are:

(i) wages;
(ii) retroactivity;
(iii) interest; and
(iv) term of the agreement.

At the hearing it became evident that two of these matters, items ii and iv, were really not in dispute. The Company agreed that any award for wages should be retroactive to 1 January 1984 for any employees who have been covered by the collective agreement since that date. As well, they agree that the term of the collective agreement should be for the calendar year of 1984. It is useful, then, to turn to the issue of wages first.

THE CLAIM FOR WAGES

The position of the Union in this matter is that each employee in the unit should receive a flat increase of fifty (50) dollars per week. This represents an average increase of 13.5% on the average earnings of the employees in this category. It would seem useful, therefore, to divide this issue into two parts, i.e., decide first whether there should be a percentage increase across the various rates in the category or whether the "flat rate" approach espoused by the Union should be adopted. Thereafter, the question of amounts can be addressed.

Flat Rate or Percentage Increases? The case for the Union on this point is both simple and compelling. They note that the employees in this category, generally speak-

ing, are women and in the lower salary ranges of the Province's employees. Therefore, percentage increases tend to provide increases at the bottom which are risible and which are far out of line with those for the higher-paid classifications in this category. Consequently it is argued that a flat rate applied across the board results in a more equitable result. We accept that this is the case; we find no persuasive argument against it. Thus, it is our intention to determine an average increase for the employees in the category and then convert this to a flat dollar rate.

THE ISSUE OF WAGES

Some Initial Considerations - The present arbitration is governed by the Crown Employees Collective Bargaining Act, R.S.O.1980, c. 108. In Section 12(2) of that Act the following appears with regard to the present type of proceeding:

> (2) In the conduct of proceedings before it and in rendering a decision in respect of a matter in dispute, the board shall consider any factor that to it appears to be relevant to the matter in dispute including,
>
> (a) the needs of the Crown and its agencies for qualified employees;
>
> (b) the conditions of employment in similar occupations outside the public service, including such geographic, industrial or other variations as the board may consider relevant;
>
> (c) the desirability to maintain appropriate

relationships in the conditions of employment as between classifications of employees; and

(d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered.

The foregoing are well-known in this field and need no comment at this point. Of significance, however, is the advent of the Public Sector Prices and Compensation Review Act, 1983, popularly referred to as Bill 111. There section 9(1) requires boards of arbitration to:

> include in [their] award or decision in a statement setting out in the form and manner specified by the Board, the Arbitrat[ion board's] opinion of the value in money of the direct and indirect cost or saving of any change in the terms of employment that is to be made as a result of the award or decision.

To this, section 10(1) sets out as a criterion for decision that:

> ...the arbitrator shall consider the employer's ability to pay in the light of existing provincial fiscal policy.

In addition, section 10(2) requires that:

> In the statement required from the arbitrat[ion board] by subsection 9(1) [they] shall also state [their] opinion of the effect of [their] award in light of subsection (1).

The "existing provincial fiscal policy" set out above has been stated to be [see Union Exhibit 8]:

> The estimated average compensation for a compensation group on the last day of the restraint period should represent either no increase or increase of up to 5% in the average compensation for the compensation group on the last day preceding the restraint period.

As in other arbitrations involving these parties, there was extensive argument put forward as to the significance of the foregoing. Briefly, the Employer urges that their effect is that there is a 5% lid on salary increases and that questions of the Province's fiscal policy should dominate this Board's deliberations. The Union claims that neither of these points are valid: raises can, and here should, exceed 5%; Ontario's fiscal policy is merely one consideration, no more important than any other, in determining the appropriate wage rate.

In our view, generally speaking, the Union's position is preferable. Thus, we cannot accept Professor Barton's view in the interest arbitration involving Thirty Participating Hospitals and the C.U.O.E., issued on 11 April 1984, that such fiscal policy is an "overriding" consideration which should "dominate" this type of deliberation. We prefer the view of P. Knopf in the Brucefield Manor award which suggests that boards of arbitration dealing with interest matters should treat the criterion in section 10(1) as no more or less important than the four criteria set out in section 12(2) of the Crown Employees Collective Bargaining Act. While the obvious goal of the Province, as evidenced by the Government position, is to limit raises to 5%, this can hardly be considered as a strict upper limit which can never be exceeded. The Treasurer has stated that increases above that figure can occur and will be paid. They have and they were. Again, to impose such limits,

given the nature of the restrictions placed on employees within the category, very clear language must be used to achieve this end. The Employer had the opportunity to do this; they have not taken it.

The Case for the Union - Essentially, the Union dealt with six points in order to sunstantiate their claim.

The first point made by the Union was that in 1983 they were to have obtained an 11% increase which the parties had earlier negotiated; but this was almost cut in half by the effect of Bill 179. They urged, therefore, that this fact should bolster their case for a substantial increase now.

Second, they argued that the cost-of-living would probably be in the range of 4.6% for the time in question. It was urged, consequently, that this should be a component in this settlement.

One of the most strongly emphasized bases for the Union claim was that this category was one peopled almost entirely, i.e., up to some 80% of the group, by women. In general, it was stated that women receive inadequate payment in relation to their male counterparts. In the instant case it was claimed that this generalization is applicable. This was one of their most insistent argument in support of their claim.

A fourth argument related to productivity. On

this point it was noted that their are two methods of measuring such productivity: by comparing changes in the numbers of civil servants in relation to the population served; the second is described in the following terms [see the Union brief, p.17]:

> The second and generally accepted method is to measure productivity of the economy as a whole. This can be done by dividing Ontario's gross provincial product expressed in dollars of constant value by the total number of people employed, adjusting for changes in the percentage of employees working full-time or part-time.

Using either of these approaches, the Union claims that it can be shown that there have been important efficiencies which have emerged in recent years. The Union wishes members of this category to share in these savings.

A fifth type of argument related to raises provided by the Government to doctors in Ontario. For the present year it was claimed that doctors in Ontario would receive increases in earnings of 8.1% for 1984. As the Treasurer has called these raises to be "affordable" and considering that doctors as a group are the highest paid group in our economy, an award well above the Employer's offer was justified.

The final line of argument related to the ability of the Employer to pay the request of the Union. On this point there was extensive documentation. Basically, the thrust of this was to show that the economy was strong enough to pay the type of decision being sought by the

Union. Given the amount of this documentation and its inclusion in the Union brief, it is unnecessary to set that out here.

The Employer's Case - The case for the Employer started with the view that central to a determination of the appropriate increase should start with an examination of the state of the economy and its relation to this issue. On this point, the Employer quoted with approval the comments of Dubin, J., in an interest arbitration award in 1975 relating to the Metropolitan Toronto Board of Education. He stated that, among other things, the following factors should be taken into account:

> The economic climate of the day including consideration of the gross national product and of the gross provincial product.

And:

> The interest and welfare of the public and the financial ability of those who are called upon to pay the cost of the services being rendered.

And:

> One cannot ignore the timing of the arbitration. Every award of an arbitrator must have regard for the economic climate of the day. One need not be an economist to appreciate that the economic climate of today, even apart from the Anti-Inlation Act, as a matter of prudence at least, commands a restraint on all of us. This applies equally to the public sector as well as the private sector. Everyone is concerned about the increases in costs of providing the services rendered by those in the public service.

Taking this approach, the Employer argues that when the Government enunciated its policy of restraining

pay increases in the public sector to 5%, such was a definitive statement of the state of the economy. Since then, it was urged, no real change has occurred in this area. The Employer, as did the Union, set out a wide range of statistics to show that the economy is still "frail". Indeed, it was suggested that there looks like a possible downturn in the economy in the coming year. This, in their view, supports a decision well below the upper limit wanted by the Government.

In support of this position, the Employer also stresses that a decision such as that requested by the Union would seriously harm the ability of the Province to carry out its various progammes for the public in an adequate way. To this end, they state [see Employer Brief, p.13]:

> In our view it would be inappropriate to scale down the government's labour market initiatives for the unemployed, or to lower social service spending, at a time when the demand is at such a high level, simply to accomodate higher wage demands. The employer submits that extraordinary reasons must exist before the 5 per cent upper limit is exceeded and argues that no such reasons exist in this case.

In result, then, the Employer takes the view that an appropriate level of increase in compensation in this case would be 4%. It was urged, therefore, that the Board should make an award of this dimension.

OUR DECISION ON WAGES

Having considered the above, it is our view that the appropriate rate for settlement would be 6.5%. As indicated earlier, as requested by the Union, this increase is to be converted to an average dollar rate across the category to obtain a flat rate which will be payable as already set out.

In coming to this conclusion we were influenced by a number of factors. Only a few of these need be mentioned. First, we would note that we do not look at the contemporary economy in the same gloomy way suggested by the Employer. While things may not be rosy in the future, the present decision should reflect present circumstances. Second, while in the abstract this type of award may impinge on the Government's ability to carry out other programmes - indeed, any increase would do this - , there is no reason to conclude this will have any significant impact in this area. Third, one factor which impressed this Board was the question of the generally lower wages paid to this category, peopled as it is largely by females. It seems appropriate and in keeping with public policy that this gap be lessened. While the Employer may argue that this is not an appropriate time to do this, one might ask in a rhetorical fashion when an appropriate time would exist for such change.

As noted earlier, it is necessary that we

state our view of both the cost of this to the Employer and its ability to pay this amount. Given the nature of the increase, the former would be 6.5%; we have already stated our view on the latter.

THE QUESTION OF INTEREST

In their brief the Union, when asking for full retroactivity, also asked this Board to "include an allowance for interest from [1 January 1984] [Union Brief, p.64]". This is a matter which was not argued at length at the hearing and apparently received equally short shrift during negotiations. Thus, in this form, we do not propose to grant the Union request. However, should this increase not be paid within thirty days of the issuance of this award, interest at the prevailing prime rate shall be payable.

CONCLUSION

The foregoing, then, constitutes the award of this Board. As agreed by the parties, the Board directs that the parties meet for the purposes of costing out this award for the purposes of submission to the Income Restraint Board in accordance with Bill 111. It is hoped that this can be done as speedily as possible.

Finally, the Board retains jurisdiction to deal with any problems the parties might encounter in the implementation of this award.

DATED at Lynden, Ontario, this 13th day of December, 1984.

E.E.Palmer, Q.C.
Chairman

I concur/dissent

P.Camp

I concur/~~dissent~~

F.Taylor 12/12/84

Re: T/26/84 A Dispute Concerning the OPSEU and Crown/Ontario: Clerical Services Wage Bargaining Category

D I S S E N T

With respect, I must disagree with the majority in this case of a Supplementary award related to the Clerical Services Wage Bargaining Category.

Firstly, in the matter of "Interest", it has been concluded in Page 3 of the Award.

> **"Briefly, it is our view that the employer is asking to re-open a question that has already been decided in this case."**

Secondly, in the matter of "The Base for Increase", the Board has accepted new evidence and argument from the Union to support new Collective Agreement language which did not form part of the Union's position at the first hearing nor have reference in the first award.

So in the first instance the Board is chosing to deny the Employer's concerns, in other words to become "functus". In the second instance the Board is reversing this jurisdiction by grantng the Union Collective Agreement language based on new evidence and new argument. In order to be consistent the Board should also have considered itself "functus" in the second instance.

...../2

Dealing with the specifics of the supplementary award:

1. Interest payable after 30 days. This has been stated to the Board members to be a typeographical error. It is inconsistent with the awards of five other chairmen and inconsistent with two other awards of the Chairman of this Board.

This Board member would have corrected the 30 days to read 60 days.

2. The base for increase. In support of this position of the Union and the awarded Collective Agreement language, the Union cited one possible case of an employee's classification being subject to the arbitration proceedings where the resulting rate may be changed.

This Board member takes the view that such Collective Agreement language is unnecessary and further serves only to undermine the relationship between the parties by supporting the lack of trust apparent in the Union's position.

Finally, the matter of the implementation document to be included in the Collective Agreement. No useful purpose can result from such inclusion, it is a "one shot" document and serves no purpose in the continuing application and the administration of the Collective Agreement.

P.D. CAMP
Consultant
Labour Relations
Westinghouse Canada Inc.

/fs

T/27/84

T/0027/84-1

IN THE MATTER OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT AND IN THE MATTER OF AN ARBITRATION

BETWEEN: THE CROWN IN RIGHT OF ONTARIO

(The Employer)

AND ONTARIO PUBLIC SERVICE EMPLOYEES UNION

(The Union)

AND IN REFERENCE TO THE GENERAL OPERATIONS WAGE BARGAINING CATEGORY

BOARD OF ARBITRATION: Lita-Rose Betcherman, Chairman
Brian Switzman, Union Nominee
G. B. Walker, Employer Nominee

APPEARING FOR THE EMPLOYER: W.J. Gorshinsky

APPEARING FOR THE UNION: Gerry Griffin, James Onyschuk

PLACE AND DATE OF HEARING: Toronto, Ontario
September 28, 1984

This is an arbitration pursuant to the Crown Employees Collective Bargaining Act. The matter in dispute concerns wages for 1984 for employees in the General Operations Wage Bargaining Category. The average weekly wage is $355.53.

The union is asking for a general increase of $1.40 an hour for all classifications which amounts to a percentage increase of 15.74% on the average earnings of this category in December 1983. It further asks for increases, above and beyond the general increase, for several classifications to bring them to parity with certain other classifications; the union grounds its request in these Special Cases on the principle of equal pay for work of equal value. Specifically, the union is asking that Cooks 2 and Bakers 2 receive wage parity with the Maintenance Painter and Decorator classification; Helpers, Food Services 2, and Laundry Workers 2 with Cleaner 2, and Sewers 1 with Tailors. The union asks that the rest of the classifications in each series move upwards in the wake of the Special Case classification.

The employer offers a general increase of 4 percent and opposes the Special Cases request on the ground that this board should not entrench upon the on-going job evaluation negotiations. In rebuttal the union pointed to the inordinate length of time these negotiations are taking.

DECISION

Wages - General

The criteria which this board must take into account in determining the wage dispute before it are set out in Section 12(2) of the Crown Employees Collective Bargaining Act:

(2) In the conduct of proceedings before it and in rendering a decision in respect of a matter in dispute, the board shall consider any factor that to it appears to be relevant to the matter in dispute including,

(a) the needs of the Crown and its agencies for qualified employees;

(b) the conditions of employment in similar occupations outside the public service, including such geographic, industrial or other variations as the board may consider relevant;

(c) the desirability to maintain appropriate relationships in the conditions of employment as between classifications of employees; and

(d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered.

An additional criteria was introduced in the Public Sector Prices and Compensation Review Act (Bill 111) which covers these employees:

10. - (1) Every Act or regulation that requires or permits an issue that arises in collective bargaining by or on behalf of employees to whom this Part applies to be submitted to or determined by arbitration shall be deemed to include a provision that the arbitrator shall consider the employer's ability to pay in the light of existing provincial fiscal policy.

Provincial fiscal policy as stated by the Treasurer is that wage increases in total group compensation for affected groups should not exceed 5 percent. A 5 percent payroll increase was budgetted for and provincial grants and transfer payments to funded organizations were kept within these limits.

In reaching its decision on a wage increase, the board took into consideration all the aforementioned factors in the light of the evidence and argument put before it. We turn first to the factors set out in the Crown Employees Collective Bargaining Act.

a) There was no evidence that the employer is encountering staffing difficulties at current rates. Indeed, unemployment remains high throughout the country.

b) This factor reflects the consensus that compulsory arbitration should replicate free collective bargaining wherever possible. Most of the occupations in this group can be found in the private sector. In this board's view, information on private-sector settlements is virtually a necessity for comparison's sake. Yet in making its case the union did not give us any such useful information. The union's only reference to compensation outside the government was Table 2 of its submission showing the relative wage rate increases between the private and public sectors from 1976 to 1983. Since the cumulative increase was almost on a par, this does not help the union's case.

For the rest of the public sector, there was very little data on negotiated or arbitrated settlements available. To support its position that the 5% guideline could be exceeded, the union introduced the Knopf Award in Brucefield Manor and the Christian Labour Association of Canada. In that case the arbitrator awarded an increase in wages of 7.6% on an annual basis; however, in dollars and cents this increase merely brought the wages for housekeeping, laundry, and kitchen personnel to $5.31 as of May 15, 1984 -- well below the industry norm. By way of comparison, the 1983 wages for cleaners, food service helpers, and laundry workers in the instant group clustered around the $8.50 per hour figure. The Brucefield Manor award illustrates the importance of looking at base rates as well as percentage increases for a meaningful comparison.

In the absence of information on 1984 wages and wage increases from the union, the board must give considerable weight to the data supplied by the employer which show private and public sector negotiated settlements for 1984 running at or under 5 percent exclusive of merit increases.

c) There was no evidence that this group was not in its proper relationship to other employee groups in the wage hierarchy nor that it suffered more from the recent wage restraints than the other groups. There was no clear trend with regard to 1984 wage increases in the public service and no evidence to date to show that this group had lost ground vis-à-vis the other groups.

d) Comparable rates for comparable work is a good test of fair and reasonable remuneration. We were given no evidence to support a conclusion that this group of employees is underpaid relative to others similarly employed. (A consideration of the Special Cases argued for by the union follows below.)

We now consider the four-fold argument advanced by the union in support of its wage demand:

1) Cost-of-living. Increases in the cost of living in 1984 have been consistently below 5 percent (at mid-1984 the increase in the C.P.I. stood at 3.7 %) and there is little prospect of a sharp upward movement in prices in the remaining portion of the year.

2) Purchasing power slippage in 1983. All public sector groups were affected by the restraint program in 1983. Economic conditions led to similar consequences in the private sector. Thus the problem of earnings not keeping pace with the cost of

living was certainly not peculiar to this group.

3) Increased productivity of this group. Given other factors such as technological change, it is not possible for the board to make a finding on this point.

4) Rollback adjustment. As stated above, this group has not dropped behind other public service groups as a result of the 1983 rollbacks; therefore catch up is not required.

Having considered all factors in the light of the evidence, as well as the provincial fiscal policy, the board awards a wage increase to all employees in the General Operational Services Category of five percent (5 %) or fifty (50¢) per hour, whichever is greater.

Wages - Special Cases

To achieve the objectives set out in ss.(c) and (d) of Section 12, an arbitration board may make special wage awards to specific classifications. To support its wage parity claims, the union provided the appropriate job descriptions. However this board is of the view that such changes require job evaluations. The job descriptions give us reason to believe that the jobs in question should be reevaluated without further delay. In order to enable another arbitration board to make an award in the matter of special cases, we recommend that, prior to the next round of negotiations, the parties conduct, or cause to be conducted, job evaluations of the jobs in question.

Duration and Retroactivity

In accordance with the agreement of the parties, the term of this agreement shall be January 1, 1984 to December 31, 1984.

The wage increases awarded herein shall be retroactive to January 1, 1984, and shall apply on a pro-rated basis to employees who have left the service since that date. The Employer shall write to the said employees at their last known address to inform them of their entitlement within fifteen (15) days of the date of this Award, with a copy to the Union. The said employees must respond in person or in writing within thirty (30) days from the mailing of the letters in which to claim their entitlement. Thereafter the Employer shall have no liability for retroactive adjustments to these employees. All retroactive pay under this Award shall be paid to employees no later than sixty (60) days after the date of this Award.

As agreed to by the parties, the Board directs that they meet for the purpose of costing out this award in order to submit it to the Inflation Restraint Board as required by Bill 111.

The board of arbitration shall remain seized until its award is implemented.

Dated at Richmond Hill, Ontario, this 11th day of December 1984.

Lita-Rose Betcherman

Lita-Rose Betcherman, Chairman

I concur/~~dissent~~

"Brian Switzman -- see Addendum"

Brian Switzman, Union Nominee

I concur/~~dissent~~

"Gordon B. Walker"

G. B. Walker, Employer Nominee

IN THE MATTER OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

AND IN THE MATTER OF AN ARBITRATION

BETWEEN: THE CROWN IN RIGHT OF ONTARIO

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

A D D E N D U M

I have signed the chairman's award. In particular, I endorse the minimum increase of 50¢ per hour for all employees. This increase takes these employees past the absolute 5% ceiling espoused by the Government negotiators.

The General Operations services category is, on average, the second-lowest paid of the nine categories. More than 40% of these employees are women. What is unfortunate is the fact that these women, for the most part, perform the lowest paid jobs in this low-paid wage category.

What is truly shocking is that, based on commonly accepted standards, many of these employees working for the benefit of citizens of this Province, are paid at or below the poverty line for family income earners. It is simply unconscionable for this state of affairs to continue.

To be fair, I recognize that major increases were negotiated by the government and these employees just prior to the imposition of Bill 179. Indeed, had it not been for this draconian piece of legislation, it was anticipated that this

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category of employees would have received the 11.5% increase (rolled back to 5.45%) that was negotiated for the Clerical Services category. Thus, in one fell swoop 6% was taken out of the pay packets of these low paid employees.

By creating a minimum increase of 50¢ per hour, this award begins to again address the solution to the problem of poverty line wage scales, that had been derailed during the period of the restraint legislation.

Our award is being issued during the last month of its effective term. It is my expectation that these delayed increases can now be fully implemented in this upcoming round of negotiations.

Wages - Special Cases

It is appropriate at a bargaining table to negotiate changes to specific job classifications. In the recent past the Union has highlighted certain classifications that require special attention.

The Employer has put off any serious consideration of these matters by referring them back to the prolonged job evaluation studies that have been dragging on and on. Quite simply, time has run out. Inequalities cannot be broached any longer.

Of the three special cases presented to our board of arbitration, I would have ruled that in at least two of the cases there was sufficient evidence to make a remedial award.

However, the chairman has made her strong recommendation that these jobs be re-evaluated prior to the completion of the

...../3

next round of bargaining. Should any roadblocks be put in the path of this endeavour, the party taking such action is certain to stand in a most negative light before the next board of arbitration, should these issues be raised.

Respectfully submitted

Brian Switzman

Brian Switzman
Union Nominee

T 27/84

T/0027/84-2

IN THE MATTER OF AN ARBITRATION UNDER THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

BETWEEN:

THE CROWN IN RIGHT OF ONTARIO
(The Employer)

AND

ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(The Union)

SUPPLEMENT TO AWARD

Subsequent to its award issued December 11, 1984, the Board was advised by the Union that the parties had failed to execute a collective agreement giving effect to the award. The Union requested the Board to execute the agreement on behalf of the parties, in accordance with Section 13(2) of the Crown Employees Collective Bargaining Act. The Union provided the Board with the document attached hereto which was purported to accurately reflect the Board's award.

Section 13(2) of the Act states:

> Where, during the bargaining under this Act or during the proceedings before the board, the parties have agreed upon some matters to be included in the collective agreement and they have so notified the board in writing, the board's decision, except as otherwise agreed by the parties, shall be confined to the matters not agreed upon by the parties, and, if, following the rendering of the decision, the parties fail to agree on the terms of a collective agreement within ten days after the release of the decision or within such longer period as may be agreed upon by the parties, the board shall prepare a document giving effect to the agreement of the parties and its decision and shall submit the document to the parties for execution.

The Board is satisfied that the document prepared by the Union gives effect to the decision of the Board and to matters agreed upon by the parties.

Accordingly, pursuant to Section 13(2) of the Crown

Employees Collective Bargaining Act, R.S.O. 1980, ch. 108, the Board submits the attached document to the parties for execution.

Dated at Richmond Hill, Ontario, this 6th day of November 1985.

Lita-Rose Betteridge

"Brian Switzman"

"Dissent to follow -- G.B. Walker"

Union Proposal

Appendix to the Collective Agreement

between

The Crown in Right of Ontario

and represented by the

Management Board of Cabinet

and

The Ontario Public Service Employees Union

-

The parties hereto have agreed to all matters in dispute and to the following terms in respect of the General Operations Category.

1) Term

One (1) year, effective from January 1, 1984 to December 31, 1984.

2) Salaries

a) Effective January 1, 1984, an increase of 5% or fifty (50) cents per hour, whichever is greater, for all classifications in this category to be applied to the salary rates payable on December 31, 1983.

b) The salary rates resulting from the application of the increase set out in 2(a) above are listed in Appendix A of this agreement. It is understood that in the event of a discrepancy between the increase set out in 2(a) above and the rate listed in Appendix A, the provision set out in 2(a) above shall prevail.

3) Retroactivity

-

T29/84

IN THE MATTER OF AN ARBITRATION UNDER THE CROWN EMPLOYEES' COLLECTIVE BARGAINING ACT, R.S.O. 1980, c.108:

BETWEEN: THE ONTARIO PUBLIC SERVICE EMPLOYEES' UNION (hereinafter called the "Union")

AND

THE CROWN IN RIGHT OF ONTARIO (ADMINISTRATIVE SERVICES CATEGORY) (hereinafter called the "Employer")

BOARD OF ARBITRATION: E. E. Palmer, Q.C., Chairman
J. Morrow
P. Brennan

APPEARANCES FOR THE EMPLOYER: W. Gorchinsky & Others

APPEARANCES FOR THE UNION: B. Hebden

The present arbitration arises out of a dispute between the parties as to the contents of their collective agreement for the calendar year of 1984. Essentially, all matters except those relating to wages were settled to the mutual satisfaction of the parties and only the latter issue comes before this Board of Arbitration, to which no objections to our jurisdiction were made. It might further be noted that the parties also agreed that there should be full retroactivity during the period of the operation of this collective agreement. Thus, aside from the question of the appropriate wages, the only question still in issue was whether interest should be paid on wages awarded to the Union.

Before turning to the arguments advanced by the parties, it is useful to set out their positions with respect to wages. In this regard, the demand of the Union is essentially that a wage "increase of $55.00 a week across the Board be given to all employees; that this be made fully retroactive to 1 January 1984 and that "this retroactivity include an allowance for interest from that date." The Union estimates that this increase would amount to 9.8% of the category's average weekly earnings as of December 1983.

The response of the Employer was to offer a general wage increase of 4% which they claim to be the going settlement rate for the first quarter of 1984 and which they felt was entirely appropriate irrespective of restraint legislation. As noted, they agreed to the term of agreement and the question of full retroactivity; but rejected any claim with respect to interest.

The Claim for Wages

The Union, as noted above, makes a claim for a general raise equivalent to 9.8%. The basis for this claim lies in six factors: slippage in the cost-of-living; an anticipated rise in the cost-of-living; the gap in raises accorded to other categories of Government employees; an increase in the productivity of the present category; pay comparisons with other related jobs; and general trends in wages and salaries. The Union argues that this would justify a far higher raise, but to be responsible requests something far less.

Most of these points are obvious and the supporting documentation is found in the Union brief and thus need not be repeated here. The fourth point, however, requires some elucidation. Noting that normal methods of computing productivity in the market sector of the economy are not apposite for the task in the public sector, the Union set out two methods of dealing with this issue. The first is to look at the number of civil servants providing service to the number of the public so serviced. On this basis, among other things, the Union suggests the increase in productivity in recent years is significant.

The other method is described in the following manner [see Union Brief, p. 64]:

> The second and generally accepted method of measuring productivity relates to the economy as a whole. It involves dividing Ontario's gross provincial product expressed in dollars of constant value by the total number of people employed, adjusted for changes in the percentages of employees working full-time and part-time.

On this basis, the output per person employed in Ontario was 3.4% higher in 1983 than in 1982. They suggest this increase is continuing.

The Union also commented at length on the Public Sector Prices and Compensation Review Act (Bill 111). Much of this need not be discussed here as it is of a procedural nature. The main point of this part of the Union Brief, however, is directed towards Section 10(1), which states that: "...the arbitrator shall consider the employer's ability to pay in light of existing provincial fiscal policy."

On this aspect of the case, the Union made several points. First, they urged that no particular emphasis should be placed on the words "consider the employer's ability to pay." In their view, this adds nothing to existing arbitral jurisprudence in this area; arbitrators have always considered (i.e., put their minds to) the factor of ability to pay. Generally, little or no weight has been given to this. Examples of this were given. Second, they discussed the implications of the words "in light of existing provincial fiscal policy." Here, of course, the key to the discussion is the Provincial policy set out in the following words [Union Brief, Exhibit 8]:

> The estimated average compensation for a compensation group on the last day of the restraint period should represent either no increase or an increase of up to 5% in the average compensation for the compensation group on the last day preceding the restraint period.

Briefly, the Union takes the view that this should not inhibit this Board of Arbitration in any way. While not arguing that

this position should not be considered at all, it was stressed that one should not adopt this consideration as "an overriding one which must dominate [this Board's] deliberations", the words used by Professor Barton in Re Thirty Participating Hospitals and C.U.O.E. (11 April 84).

Finally, in a general way, the Union then canvassed trends in wages and salaries in the general economy to the end that such supports the Union claim. In the same vein, it was argued that the economy is improving and supports the abilty of the Province to pay this amount.

The case of the Employer for its position of a 4% raise was as follows:

First, the Employer started its argument with the view that the increase granted in this case should be reflective in a general way of the present state of the economy to this end, they stated the words of Dubin, J., in the Metropolitan Toronto Board of Education interest arbitration in 1975:

> "The economic climate of the day including consideration of the gross national product and the gross provincial product."

and

> "The interest and welfare of the public and the financial ability of those who are called upon to pay the cost of the services being rendered."

and

> "One cannot ignore the timing of this arbitration. Every award of an arbitrator must have regard for the economic climate of the day. One need not be an economist to appreciate that the economic climate of

> today, even apart from the Anti-Inflation Act, as a matter of prudence at least, commands a restraint on all of us. This applies equally to the public sector as well as the private sector. Everyone is concerned about the increase in costs of providing the services rendered by those in the public sector."

The Employer then goes on to set out numbers of statistics which tend to show, in their view, a rather sluggish economy. While there is some improvement, it was urged that there were clouds on the horizon that showed an uncertain future.

Further, as supportive of this view, the Employer argues that Bill 111 limits this Board to increases of no greater than 5%. In short, they claim [Employer Brief, p. 10]:

> The new restraint program established a guideline range of 0 to 5 per cent for average increases in compensation for a group. Within a group, anomalies can be resolved as long as the average does not exceed 5 per cent. Compensation is defined to include wages or salaries, benefits, perquisites and wage or salary increments.

It is within the foregoing limit, then, that the Employer says the foregoing factors should be considered. Indeed, they go further and argue that total compensation (i.e., fringe benefits) must also be considered. Moreover, the effect of this award upon the Employer's general obligations to provide service to the public generally. This appears to stem from the view that [Employer's Brief, p. 16]:

> Not only does the Act require an arbitrator to consider the employer's ability to pay, it also requires the arbitrator to state his opinion as to the effect of his award on the employer's ability to pay. Therefore, a superficial approach does not comply with the

> requirements of the Act. Arbitrators must meet the issue squarely and give effect and meaning to the law.

In result, then, it was put forward that the above reasoning supports the Employer's offer.

Resolution of the Wage Issue

Having considered the foregoing, it is the view of this Board that the appropriate percentage increase for wages in this category should be 5%.

In coming to this conclusion, we have not only taken into account the section of Bill 111 set out above as well as those factors set out in Section 12(2) of the Crown Employees Collective Bargaining Act, R.S.O. 1980, c.108. We would note with respect to the former that we see no reason to give this any priority over the latter factors. Similarly, we accept the general position that the Provincial guideline of 5% is just that - a guideline. It is not a limit. The Provincial Treasurer has made that clear.

It is also perhaps appropriate to comment upon the language relating to "ability to pay" in Section 10(1). In its broadest sense - the one suggested by the Employer - it is almost impossible for a board of arbitration to give adequate consideration to this matter. While in one sense the taxing power permits the Employer to pay virtually any increase given, such would be too facile an approach to take. However, to adequately consider what effect an award will have on the ability of the Province to carry out its other programs and undertakings is an almost impossible task in the normal interest arbitration: among other things, there are far too many unknowns. Notwithstanding that,

the present increase would not appear to be so significant as to impair the Employer's budget in any significant way.

Again, we would note that it is our view that this increase does reflect the various factors put forward by the parties. In our view, this is especially the case with respect to the comparisons which can be drawn with the private sector.

Finally, we do not accept the view of the Union that it would be appropriate to place the increase here given on an "across-the-board" method. While in some circumstances this might be a reasonable approach, we do not find here the compelling reasons which would lead us to this result. Consequently, we do not award it.

The Question of Retroactivity and Interest

There seems to be no dispute between the parties that there should be full retroactivity to 1 January 1984 for all employees who are or were in this category. The Union, however, also requested "an allowance for interest" from 1 January 1984. We are only willing, however, to grant interest for a period starting sixty days after the issuance of the award. This seems a reasonable response to this issue.

Conclusion

The foregoing, then, is our Award. The parties shall present this Award to the Inflation Restraint Board, along with their estimate of its cost. Given the nature of our decision, the Board's best estimate, which we submit under Section 9(1) of Bill 111, is that the cost is 5%.

The Board shall remain seised of this matter for a

period of sixty (60) days from the date of this Award should the parties experience problems in implementing this Award.

DATED at Lynden, Ontario, this 13th day of December, 1984.

E. E. Palmer, Q.C.

I concur/~~dissent~~

J. Morrow

I ~~concur~~/dissent

P. Brennan

DISSENT

Having carefully reviewed the majority award in this matter, I must dissent from its conclusions. My decision is based on a number of considerations related to the wage increase, whether it should be applied on an "across-the-board" basis and whether interest should apply. Each of these aspects of the award will be addressed separately below.

Wage increase

The majority of the Board awarded a five per cent increase for wages for employees in the Administrative Services Category and in doing so it indicated, in part, that it had taken account of s.10(1) of Bill 111. It also stated that "we accept the general proposition that the Provincial guideline of 5% is just that - a guideline. It is not a limit."

S.10(1) of the statute requires arbitrators to "...consider the employer's ability to pay in light of existing provincial fiscal policy." Accordingly, the Board was, in my respectful view, bound to "consider....ability to pay" (although not required to give the factor any weight). But the Board was not required to accept the so-called Provincial guideline of five per cent - even as a mere "guideline."

The error, in my opinion, flows from the mis-application of the criterion that the Treasurer of Ontario determined for the purpose of s.4 of Bill 111 and which was set out in an Inflation Restraint Board Bulletin of February 20, 1984 as follows:

> The estimated average compensation for a compensation group on the last day of the restraint period should represent either no increase or an increase of up to 5% in the average compensation for the compensation group on the last day preceding the restraint period.

The criterion, however, which was established pursuant to s.4(1) of the Bill, is clearly for the sole guidance of the Inflation Restraint Board - not for that of an arbitrator. S.4(1) states, in part:

> The Board shall assess changes in compensation in the public sector to determine their conformity with such criteria as the Treasurer determines...

The Board, defined as the Inflation Restraint Board in s.1(b) of Bill 111, is charged by the statute with certain reporting functions. So be it. It is totally unwarranted, however, to infer that such instructions as may be issued by the Treasurer to the Board, pursuant to s.4(1), amount to guidelines to be taken account of by arbitrators in their deliberations. They do not amount to "existing provincial fiscal policy," whatever that may be and, accordingly, they are not relevant to the activity or deliberations of any body other than the Inflation Restraint Board.

It is my view, therefore, that arbitrators are in danger of stepping outside their jurisdiction when they purport to accept criteria, determined ty the Treasurer for the guidance of the Board pursuant to s.4(1) of the Bill, even on the basis that they are mere guidelines. To the extent that the instant arbitration decision was influenced by the majority's acceptance of the so-called five per cent criterion - even as a guideline - it is my respectful opinion that the award was based on a factor which should have been excluded from consideration.

At p.8 of the majority award it is stated that the five per cent award:

> ...does reflect the various factors put forward by the parties. In our view, this is especially the case with respect to the comparisons which can be drawn with the private sector.

With all respect, I must disagree. In a well-documented case, the union outlined the adverse consequences of inflation on its members in recent years; and showed relative shortfalls in the wages of its members, vis a vis other relevant groups, both within the public sector and outside.

It is clear from the union data that all or most groups have suffered from the ravages of inflation in recent years; but it is equally evident that the other groups have been less severely affected. The majority award in the instant case is hardly in tune with "the comparisons which can be drawn with the private sector." In fact, data available from Statistics Canada, Employment, Earnings and Hours, indicate that the converse is true. Average weekly earnings data for the industrial composite in Ontario (a survey based on many hundreds of thousands of workers in the private sector) show an increase of 6.6 per cent in the average weekly earnings during the 12 months ended July, 1984 (the latest data available at the time of writing) in comparison with the average for the previous 12 months.

The most recent earnings data for a substantial proportion of workers in Ontario's private sector indicate that their weekly earnings have been improved by an average 6.6 per cent. A salary award of at least this much, therefore, would have been required in order that employees in the Administrative Services Category simply maintain their wage relationship with the private sector. An increase above 6.6 per cent would have reversed the relative wage deterioration which has taken place in recent years and I would have so awarded.

Across-the-board application of wage increase

The practical effect of the union wage proposal, if applied as a flat dollar amount across-the-board, rather than as a general per cent increase, would be to reduce the relative wage differentials between the various classifications. In my respectful view, the union presented cogent arguments in support of a reduction in the range of rates for the Administrative Services Category. I would have responded favourably to this aspect of its proposals.

Interest

The union proposed that the award include an allowance for interest from January 1, 1984 and this was also denied by the majority

of the Board. I must, again, respectfully disagree.

There is little enough, at present, in most public sector negotiations to encourage and motivate the employer to proceed with dispatch. Where, as here, the union does not have the right to strike, it is quite limited in the tactics available to it to achieve a settlement within a reasonable time frame. This may be the major reason that the employees in the instant case have been without a contract for almost a year.

Forcing the employer to pay interest to run from the date of the renewal agreement, would be equivalent to imposing upon it a bit of the discipline of the market place. The logic of such an award, given that the employer otherwise has the free use of many millions of dollars in delayed wage improvements - and a reduced incentive to settle, in consequence - is compelling. I would have awarded an allowance for interest, at market rates, to run from January 1, 1984.

DATED at Toronto, Ontario, this 19th day of December, 1984.

Paul Brennan

Paul Brennan

IN THE MATTER OF THE CROWN EMPLOYEES' COLLECTIVE BARGAINING ACT R.S.O., 1980 C. 108

AND IN THE MATTER OF THE DISPUTE

BETWEEN	WORKERS' COMPENSATION BOARD (The Employer)
AND	THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1750 (The Union)
BOARD OF ARBITRATION	H.D. BROWN, CHAIRMAN L. ROBBINS, UNION NOMINEE D. BLAIR, EMPLOYER NOMINEE
APPEARANCES FOR THE EMPLOYER	C.G. RIGGS, Q.C. COUNSEL AND OTHERS
APPEARANCES FOR THE UNION	G.O. JONES, NATIONAL REP. J. LYND, NATIONAL REP. R.A. CARNOVALE, PRESDIENT LOCAL 1750 AND OTHERS

HEARINGS IN THIS MATTER WERE HELD AT TORONTO ON APRIL 11 and 12, 1985.

AWARD

The Board was constituted pursuant to the provisions of the Act to determine the matters remaining in dispute between the parties with regard to a renewal of a collective agreement which expired on September 30, 1984. The parties subsequently met directly in negotiations and resolved some of the issues directly between them. The Board directs that the unamended terms of the previous collective agreement, together with the agreement of the parties as filed with the Board on those issues resolved directly between them and the terms of this award, be incorporated into their collective agreement. The Board further directs that unless specifically set out, either in the agreement of the parties or in this award, all amendments to the collective agreement shall become effective as at the date of the award.

The Union is recognized as bargaining agent for all employees with certain exceptions not here relevant and encompasses about 1950 employees in total of the categories of senior administrative, clerical and administration, treatment and industrial. The latter two categories are located primarily in Toronto while the others are located throughout the province. There are 22 headings of the issues remaining in dispute between the parties and referred to this Board with two exceptions. Both the issue with regard to technological

change, Article 6.05 and the issue on health and safety, Article 24, have been referred to this Board, but just prior to the hearing an issue was raised by the Employer concerning whether these matters come within the scope of collective bargaining under the Act and therefore pursuant to Section 40 (2) thereof, those questions have been referred to the Ontario Public Labour Relations Tribunal for its decision. Until therefore the Board's jurisdiction with regard to these matters has been determined, the Board will defer its decision, if required, on these issues and will retain jurisdiction to deal with both issue should it subsequently be determined that it has the jurisdiction to do so under the Act. Subject to that reservation, the Board will deal with the remaining issues in dispute in the order presented to it at the hearings. The Board notes the agreement of the parties that the term of the agreement shall be for one year from October 1, 1984 to September 30, 1985.

1) ARTICLE 4 - SENIORITY

The present clause provides that, "for all employees in the bargaining unit as of May 31, 1977, seniority as referred to in this agreement shall be based upon and shall mean length of continuous service

of the employee with the employer..." The Union seeks to delete this provision and replace it with a clause to provide for length of service in the bargaining unit, which would remove the seniority for service by employees prior to May 1977.

The Board has considered the submissions of both parties with regard to this request for a change and its effect in the bargaining unit and awards that the present Article shall remain unchanged. The Board therefore rejects the Union's proposal and directs that the present Article 4 be continued without change in the collective agreement to be entered into by the parties.

2) ARTICLE 5 - PROMOTIONS AND STAFF TRANSFERS

The Board awards that Article 5.01 shall be amended to provide as follows;

> "When a vacancy of a permanent nature occurs or a vacancy of a temporary nature occurs and is expected to exceed thirty calendar days (for reasons other than vacations) or a new position is created within the bargaining unit, the position will be filled as follows;

The above will replace the preamble in this Article, and the present subsections (a) and (b) shall remain unamended.

ARTICLE 5.02

The Board awards that this Article shall be in accordance with the agreement of the parties and rejects the Union's request to add to the clause, so that this Article shall be as follows;

> "All posting shall set out the position title, location if outside head office, salary level or grade and salary range, together with the major responsibilities, the basic requirements of the position and the closing date of the posting."

ARTICLE 5.03

This issue deals with job posting and we note the agreement of the Employer that seniority be given appropriate recognition in promotions. The Union's proposal is to change the present Article to ensure that no applications from outside the bargaining unit be received before all bargaining unit applicants have been

considered. The Board awards the following clause;

> "Employees without seniority will only be considered if the vacancy exists after all applicants with seniority have been considered and none have been found to be qualified."

ARTICLE 5.04

The Board awards that the present Article 5.04 shall be deleted.

ARTICLE 5.05 (d)

This Article deals with the role of seniority in promotions and transfers and in response to the Union's requested revision in subsection (d) to make seniority the principal factor in determining the job rights. The Employer has proposed that, in considering an applicants experience on a temporary assignment in the posted position would not be a deciding factor. Presently the Article provides for the use of seniority as a factor where qualifications and ability are relatively equal. The Union has requested a change to a sufficient ability clause, so that the senior employee with the qualification would be entitled to the job. This is a request for a very fundamental change in the relationship of the parties with regard to promotions,

which interacts with the relationship of the supevisory staff and the members of the bargaining unit, which in our view should be more carefully studied by the parties, before such a substantial change is made, either by them or by an Arbitration Board. We recognize that their are valid positions to be taken on both sides of this issue where management seeks to retain its discretion to promote employees on merit and the Union seeks to have the more senior employees who are qualified, to have the right of promotion, with seniority being the principal factor. The Board rejects, for the purposes of this collective agreement, the amendment requested by the Union.

The Board awards that; Article 5.05 (c) shall be amended to provide as follows,

> "that the primary considerations in filling a vacancy are qualifications and ability to perform the required duties in a competent manner."

Article 5.05 (d) shall be amended as follows:

> "Therefore in making staff changes, transfers or promotions where qualifications and ability are relatively equal, seniority shall be the determining factor. In considering applicants for posted vacancies, experience on temporary assignments in the posted position will not be the deciding factor in the selection process."

ARTICLE 5.09

The Board awards that there shall be no change to the present Article and rejects the Union's request for amendment of it.

3) ARTICLE 7 - HOURS OF WORK

The Board awards that there shall be no change to the present Article.

4) ARTICLE 16 - LEAVE OF ABSENCE

The Board awards that there shall be no changes to the present Article 16.01 (c) and (d) and rejects the Union's proposal in that regard.

ARTICLE 16.07 (a) - MATERNITIY LEAVE OF ABSENCE

The Board awards that paragraph 3 of Article

16.07 (a) shall be amended to provide as an addition thereof the following;

> "If requested in writing at least two weeks prior to the date of the expiry of the maternity leave, an employee shall be entitled to an extension of the maternity leave for up to six months in total (including the 17 weeks of leave)."

The Board further awards that Article 16.07(b) shall be amended by deleting the reference in line three thereof of "17 week".

ARTICLE 16.11 - ADOPTION LEAVE

The Board awards that Article 16.11 (a) shall be amended by substitution of "up to 12 weeks" by "up to six months" in accordance with the Union's proposal on this clause.

5) **ARTICLE 17 - LEAVE OF ABSENCE, UNION ACTIVITIES**

The Board rejects the Union's request to delete the present Article 17.01 and awards that the present Article shall remain unamended.

The Board awards that Article 17.02 shall be amended by combining the present subsections (a) and (b) and to provide 100 man days to be used for union conventions or educational courses. The parties are directed to determine the language between them to incorporate the foregoing.

The Board further awards that paragraph 3 of Article 17.02 (b) shall be amended to provide as follows;

> "In applying this, no supervisor is expected to permit the leave of absence for more than one person at any one time under these provisions. Not more than one employee from each area office will be requested to be absent at one time. The Employer will consider exceptions to this clause subject to the work requirements of operations in such offices."

The Board awards that there shall be no change to the present Article 17.07.

6) ARTICLE 18 (11) - JOB EVALUATION

The Employer sought an amendment to the arbitration of disputes arising under this plan. The Board awards that the present Article shall remain without amendment and rejects the Employer's proposal.

7) ARTICLE 19 - TEMPORARY ASSIGNMENTS

The Board awards that the present Article 19.01 shall be amended to provide as follows;

> "Where an employee is assigned temporarily to perform the duties of a position in a classification with a higher salary maximum, he shall, after working three consecuive working days, be paid the rate for the job in the temporary position, provided that his rate shall not exceed the maximum range of the higher classification, except that within the industrial scale, the amount paid will be the permanent staff rate for the job. Should the temporary assignment exceed three consecutive work days, then the employee shall be paid the higher rate for the full time of the work in the higher classification from the date of the assignment."

The Board rejects the Union's proposal to amend Article 19.02 and awards that the following Article shall be included as Article 19.01 (2);

> "Where the employer temporarily assigns an employee to a work

location other than his current work location, where it is not practical for the employee to return to his principal residence each evening, the length of such assignment shall not exceed two months in any calendar year, subject to a mutual agreement between the employee involved and his manager to exceed such requirements."

ARTICLE 19.03

The Board awards that there shall be no change to the present Article and that it shall remain unamended in the collective agreement.

8) ARTICLE 21 - EMPLOYEE BENEFITS

The Board awards that the present Article shall be amended to provide for the current O.D.A. schedule of fees as may be amended from time to time and that the Employer shall contribute 66-2/3% of the premiums for this plan with the employees paying 33-1/3%.

9) ARTICLE 22 - PART-TIME AND TEMPORARY EMPLOYEES

Under this Article, the agreement provides for the regulations concerning the payment of benefits to part-time and temporary employees in which the Union has proposed major changes, by separating temporary

employees from part-time employees, with the application of benefits to all temporary employees and with the proposal of additional clauses concerning this issue.

The Board has considered the parties' positions in this regard, but finds that it is not in a position in this dispute for the term of this collective agreement to resolve a very fundamental and serious change in the part-time employees' relationships with this Employer. The Board therefore rejects the Union's submission to amend the present Article which shall remain unamended for the term of the collective agreement. The Board recommends under this heading that further consideration be given by the parties for future consideration by them directly or at arbitration.

10) ARTICLE 23.04 - MEAL ALLOWANCE

The Board awards that there shall be no change to the present practice concerning the meal and expense policy and the amounts thereunder which shall be continued in the collective agreement.

The Board awards that there shall be added to this Article that an employee would be allowed to claim reasonable expenses above the amounts as set out in

Article 23.04 (a) upon the provision of appropriate receipts for the expenditure.

11) ARTICLE 23.05 - MILEAGE ALLOWANCE

The Board awards that the structure of the present Article should remain unamended and rejects the Employer's proposal in that regard and further awards that the mileage rates shall be amended to provide as follows;

	Southern Ontario	Northern Ontario
0 - 8050 K	$.26/K	$.26.5/K
8051 - 24,160 K	.22/K	.22.5/K
24,161 - and over	.17/K	.17.5/K

The Board rejects a proposal for automatic adjustments as requested by the Union to the mileage rates. The Board further awards that the increases to the mileage rates shall be effective as and from January 1, 1985.

12) ARTICLE 23 - GENERAL

The Board awards that there shall be no change to the present Article 23.07, which shall be continued in the collective agreement without amendment.

ARTICLE 23.08

The Board awards that the present Article shall be deleted and substituted by the following;

> (a) "when performance appraisals, progress reports and disciplinary letters are to be filed on an employee's file, the employee shall be shown a copy before it is placed in the employee's file. The employee may add his views on the matter to his personnel file before the correspondence is entered in the file. The employee will receive a copy of all disciplinary notes and upon request of the employee, which will not be unreasonably demanded, a copy of the performance review, disciplinary letters and educational achievement will be provided to the employee."
>
> (b) "any disciplinary warning shall be removed from an employee's record after two years from the date of the offence, provided that there have been no similar warnings in that period, in which event the time for the application of this section shall be counted from the date of the suceeding warning."

The Board declines to make any directional award with regard to the Union's request for a clause to provide for child care reimbursements to employees in static employment who are required to be away from home on weekends, nights, etc. but recommends that this be given further consideration by the parties for future negotiations.

13) ARTICLE 25 - SEXUAL HARASSMENT

The Board has given careful consideration to all of the submissions with regard to this matter in which the Union proposed an extensive addition to the collective agreement. The Board has as well taken into account the Employer's present operational policy on sexual harassment which was filed with the Board. It is our award that the following clause shall be included in the collective agreement;

> "The Employer is committed to providing a work environment which is free of sexual harassment as defined by the Ontario Human Rights' Code, 1981. Every Employer is expected to respect the freedom,

rights and dignity of others."

14) ADDITIONAL LANGUAGE BONUS (NEW)

The Board awards the following Article shall be included in the collective agreement;

> "Payment of $10.00 per hour shall be paid to an employee authorized by the Employer to use a second language during the course of his or her employment for all such authorized time."

The Board awards that the present practice of the Employer shall be maintained for payment for occasional use of a second language.

15) WAGE AND RETROACTIVITY

In this essential issue between the parties, the Union sought an across the board increase of 8% in addition to the other adjustments, with a continuation of the normal incremental increases which the Employer states adds a further 1.12% to the total compensation. The Employer offered an increase of 3%.

There are complete written and oral presentations to the Board on this issue by the parties, all of which the Board has considered. In addition, the Board was required pursuant to Bill 111, to consider the

Employer's ability to pay in the light of existing provincial fiscal policies. Much thought and attention had been given by arbitrators to that aspect of the legislation in previous awards, of which, in accordance with the parties' briefs, have been brought to their attention and to this Board's attention and therefore it is not necessary in our opinion to reproduce those statements concerning the requirements and application of Bill 111 in a dispute of this nature. The Board has also taken into account the factors of the cost of living, settlements and arbitration awards in the public service sector and settlements in the private sector, all of which have been affected by the lower cost of living and as well the economic restraints placed by the government, as well as the general economic conditions of employees in this province. We are also of the view that the total cost of the increases must be taken into consideration for the purposes of this collective agreement. We have considered the current classification rates and have made comparisons on the data provided to the Board and find that the Union has established a reasonable and compelling basis to apply a wage increase which exceeds the provincial guidelines and which we have taken into account in the total compensation factor.

Accordingly it is the Board's award that there shall be an across the board increase of 5.5%.

RETROACTIVITY

The increases to the wage rate shall be retroactive and applied to all paid hours as and from October 1, 1984. Any employee who has been hired since that date shall be entitled to a pro rata adjustment from the date of hire. Any employee who has since left the employment of the Employer for whatever reasons, shall be entitled to an adjustment to his wage rate to the date of the termination. The Employer shall be responsible to advise any employee who has since left its employ, in writing with a copy to the Union sent to the employee's last known address by registered mail, a notice of his entitlement to a wage adjustment within 15 days from the execution of the collective agreement by the parties. Such employees shall have a period of 30 days only following the date of mailing of such notices in which to claim such wage adjustments which they are entitled and not thereafter.

The Board directs the parties to meet and determine between them the cost of their agreement for the purpose of submission to the Inflation Restraint Board pursuant to Bill 111. The Board retains jurisdiction under the Act until the collective agreement is in effect between the parties.

DATED AT OAKVILLE THIS DAY OF JULY, 1985.

HOWARD D. BROWN, CHAIRMAN

L. ROBBINS, UNION NOMINEE

D. BLAIR, EMPLOYER NOMINEE

In the matter of the Crown Employees'
Collective Bargaining Act R.S.O, 1980 c108

and in the Matter of the Dispute
Between: The Workers' Compensation Board
and The Canadian Union of Public Employees
Local 1750

Dissent of D.H. Blair: Employer Nominee

I regret that I must dissent from the majority decision in this arbitration. My dissent relates totally to Section 15 Wages and Retroactivity.

On page 17, the award states, "We are also of the view that the total cost of increase must be taken into consideration for the purpose of this collective agreement". It is my considered opinion that an across the board increase of 5.5% in addition to the other cost resulting from this award is not justified in the circumstances and is inconsistant with the above-mentioned statement from the award.

I would have awarded 4.25% across the board.

Respectfully submitted,

Donald Blair
Employer Nominee

July 11, 1985